

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

ELC APPEAL NO E015 OF 2015

EMMAH WAIRIMU

RUNO.....APPLICANT

VERSUS

JACINTA GATHONI KARIUKI.....1ST

RESPONDENT

GRACE WACICE WAWERU2ND

RESPONDENT

MARY WAMBUI.....3RD

RESPONDENT

R U L I N G

THE APPLICATION

Emmah Wairimu Runo, (*hereafter referred to as the applicant*) has come to this court against Jacinta Gathoni Kariuki, Grace Wacice Waweru, Mary Wambui (*herein referred to*

as the respondents) seeking orders that the court reviews and sets aside the judgment dated 9th October 2025. The grounds for review are that the Applicant herein moved the court by Memorandum of Appeal dated 1st April, 2025 seeking to set aside the ruling of the Business Rent Premises Tribunal dated 14th March, 2025. The Business Rent Premises Tribunal issued orders of eviction and payment of costs against the Applicant in its ruling aforementioned. Judgment in this matter was delivered on 9th October, 2025 in which the Honorable Court indicated that it did not find reasons to disturb the Tribunal's finding.

The Applicant being aggrieved by the said decision, has resolved to file its application for review of the whole of the said judgment. It has now come to the attention of the Applicant that there are Succession Proceedings in Nyahururu HCFP & A E019 OF 2025 for the estate of Simon Waweru Mugo alias Waweru Mugo one of the registered owners of the suit premises,

The alleged Power of Attorney lapsed at the point of his demise, it can therefore not be invalidated by the donee in place of

succession proceedings. The Applicant contends that he entered the lease Agreement with the said registered proprietors.

The Applicant therefore presents her reasons for review being that the Honorable Court did not take into consideration, that the Respondents are not the registered proprietors of the suit property on which the subject premises are situate.

The applicant contends that the Honorable Court upheld the assertion that the Respondents possess a Power of Attorney issued in 2017 while the registered proprietors became deceased sometime in 2021. The purported Power of Attorney allegedly issued to the Respondents, if any, lapsed upon the demise of the registered proprietors to pave way for succession proceedings.

The issue of whether a registered Power of Attorney issued during the lifetime of the donor lapses upon death of the said donor is a ripe; weighty issue that is due for consideration on review. According to the applicant, the Respondents do not have the capacity to terminate a lease agreement entered by the Applicant with the registered proprietors in the absence of letters of

administration. The Honorable Court erred in upholding the Respondents' assertion that the 1st Respondent relied on the Power of Attorney to institute these proceedings including the eviction of the Applicant.

The applicant contends that no notice was ever issued against the Applicant, the consequential reference was maliciously brought before the Honorable Tribunal which placed undue reliance on the assertion of the Respondents without any meaningful verification.

According to the applicant, the decision sought to be stayed is primarily founded on the alleged validity of the Notice issued to the Applicant. The supporting affidavit reiterates the ground of the application.

THE RESPONCE

The respondents on their part states that the Applicant herein has been a tenant in premises standing on Land Reference No. Nakuru Municipality Block 5/98, under a controlled tenancy within the meaning of Section 2 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Cap 301 Laws of Kenya.

Following persistent rent arrears, dilapidation of the premises, and their intention to carry out lawful renovations, they served upon the Applicant a Notice to Terminate Tenancy dated 30th May 2024, issued under section 4(2) of the said Act, requiring her to vacate by 31st July 2024.

The Applicant did not vacate the premises which necessitated them to file a Reference before the Business Premises Rent Tribunal (Nakuru BPRT Nov E164 of 2024) seeking immediate delivery of vacant possession of the premises, which was fully heard and determined on 14th March 2025, wherein the Tribunal upheld their notice, granting vacant possession and costs

Aggrieved by the Tribunal's decision, the Applicant preferred an appeal to this Honorable Court vide ELC Appeal NO. E015 of 2025, which appeal was heard on the merits and dismissed on 9th October 2025, this Court affirming that the Tribunal's findings were sound both in law and in fact.

The present application for review is therefore a thinly disguised appeal_couched as a review, intended to re-litigate issue

conclusively determined by both the Tribunal and this Honorable Court.

The Applicant mainly anchors her review application on alleged "discovery of new and important evidence" relating to purported succession proceedings in Nyahururu HCF P&A No. E019 of 2025 for the estate of the late Simon Waweru Mugo, one of the registered owners of the property.

The said succession cause does not in any way introduce new facts that were not within the Applicant's knowledge. The ownership and succession position of the property was raised, canvassed, and conclusively addressed both before the Tribunal and in this Court's judgment.

This Court in its judgment of 9th October 2025 noted that the issue of rent payment had been dealt in BPRT E065 of 2023 where the tribunal directed the Appellant to be paying the monthly rent to a specific joint account operated by the three

families as evident from the rulings of August 2023 and 22nd September, 2023 by Hon. Muma.

Indeed, both the Tribunal and this honorable Court found that the Respondents herein are duly recognized as the landladies and lawful representatives of the three families with a stake in the property in question.

More importantly, the issue of the respondents' capacity was raised, litigated, and conclusively determined by the Tribunal in Nakuru BPRT No. E164 of 2024 in its ruling of 14th March 2025 and the Tribunal in Nakuru BPRTC case No. E065 of 2023, (a related matter), through its rulings delivered on 11th August 2023 and 22nd September 2023, as well as by this Honorable Court in its judgment of 9th October 2025. The doctrine of res-judicata therefore applies with full force.

The Tribunal in Nakuru BPRT Case No. E065 of 2023 also determined the issue of rent payment, and from that decision the Applicant ought to have been fully aware of who her lawful landlords are, as the ruling expressly recognized and affirmed the existence of a landlord—tenant relationship between her and the

Respondents. This finding was never challenged by the Applicant and has always been within her knowledge.

The respondents state that Specifically, Grace Wacice Waweru, the 2nd Respondent herein, was at the time of filing the reference and even at the time of issuing the notice to the Applicant the duly appointed legal guardian of Simon Waweru Mugo who was then a mental patient, and therefore had the requisite legal capacity to act on his behalf. The Applicant was aware of this and she never raised any issue before the tribunal.

ANALYSIS AND DETERMINATION

This motion was brought under ***Order 45 of the Civil Procedure Rules 2010*** which provides as follows:-

“(1) any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of

new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

In the case of Francis Njoroge V Stephen Maina Kamore (2018) eKLR, my brother Njunguna J; held, and I'm persuaded, that: **"Therefore, Order 45 of the Civil Procedure Rules, 2010 is very explicit that a court can only review its orders if the following grounds exists: -(a)There must be discovery of a new and important matter which after the exercise of due diligence, was not**

within the knowledge of the applicant at the time the decree was passed or the order was made; or(b)There was a mistake or error apparent on the face of the record; or(c)There were other sufficient reasons; and(d)The application must have been made without undue delay”.

In the case of **Turbo Highway Eldoret Limited -vs- Synergy Industrial Credit Limited** [2016]eKLR Sewe J. cited the case of **Rose Kaiza -vs- Angelo Mpanjuiza** [2009]eKLR, where the Court of Appeal considered an application for review on the ground of new evidence and held that:-

“Applications on this ground must be treated with great caution and as required by r 4(2) (b) the Court must be satisfied that the materials placed before it in accordance with the formalities of the law do prove the existence of the facts alleged. Before a review is allowed on the ground of a discovery of new evidence, it must be established that the applicant had acted

with due diligence and that the existence of the evidence was not within his knowledge; where review was sought for on the ground of discovery of new evidence but it was found that the petitioner had not acted with due diligence, it is not open to the court to admit evidence on the ground of sufficient cause. It is not only the discovery of new and important evidence that entitles a party to apply for a review, but the discovery of any new and important matter which was not within the knowledge of the party when the decree was made.”

A review of judgment based on discovery of new and important matter is a legal mechanism that allows a court to reconsider its own judgment when fresh evidence or facts come to light that were not available or known at the time of the original decision. Typically, the following conditions must be met:

1. **New Evidence:** The matter must be genuinely new - not available or discoverable with due diligence during the original proceedings
2. **Materiality:** The new matter must be important and material enough to potentially change the outcome of the case
3. **Not Due to Negligence:** The applicant must not have failed to present this evidence due to their own negligence or lack of diligence
4. **Timeliness:** The application must usually be filed within a prescribed time limit from discovering the new matter

I have considered the application, replying affidavit and rival submissions and do find that the application is based on discovery of new and important material being that there are succession proceedings in Nyahururu HCFP and A E019 OF 2025 for the Estate of Simon Waweru Mugo alias Waweru Mugo one of the registered owners of the suit premises.

This court observes that the succession proceedings were initiated on 30th September 2025 almost 6 months after the

decree of the Tribunal and 5 months after the appeal was filed, but 10 days before judgment of this court. Moreover, Simon Waweru Mugo died on the 16th March 2025, 2 days after the decision of the tribunal. The death of Simon Waweru Mugo is not material to this case because he died after the decision of the tribunal. The appeal against the decision of the tribunal was brought against his guardian in law after his death and therefore it is the appellant who should have been diligent enough to know that Grace Wacice Waweru ceased being a legal guardian upon the death of Simon Waweru Mugo.

The applicant knew or ought to have known that the donees of the power of attorney had died because of the affidavit of the further affidavit of dated 31st January 2025 where it was deponed that the proprietors of the land were deceased which fact was considered by the tribunal.

The alleged new and important matters discovered by applicant happened before the decision of the Tribunal was made and were or ought to have been within the applicants knowledge but were

not raised by the applicant before the tribunal or this court on appeal and therefore cannot be raised before this court on review.

The death of the Simon Waweru Mugo happened after the judgment of the tribunal and therefore it cannot be argued that the respondents lacked the capacity to proceed before the tribunal. Moreover, Mr Waweru Mugo had a legal guardian because of his mental status.

The application is therefore an appeal disguised as a review because it requires this court to reconsider the evidence on record and re-evaluate it and draw different conclusions.

The allegation that the respondents were not the registered owners of the suit property on which the subject premises are situate is not new as in the replying affidavit dated 17th December 2024 in the Tribunal case, the applicant herein stated that the applicants in the tribunal case, who are the respondent in this application were not the registered owners of the land. The respondents in their further affidavit before the tribunal dated 31st January 2024 stated that the proprietors of the suit land were all

deceased except Waweru Mugo who was suffering a mental illness.

The allegation that the respondents do not have the capacity to terminate the lease agreement entered by the applicant with the registered proprietors in the absence of letters of administration should have been raised before the tribunal and not this court on appeal.

The allegation that the Power of Attorney issued to the respondents herein lapsed in 2021 upon the demise of the registered proprietors to pave way for succession proceedings should have been used to apply for review of the decision of the tribunal but not the decision of this court. This court finds that there is no new and important matter discerned from the supporting affidavit of the applicant. The upshot of the above is that the application lacks merit and is dismissed with costs.

**RULING DATED SIGNED AND DELIVERED ELECTRONICALLY
AT NAKURU THIS 4TH DAY OF DECEMBER 2025.**

A. O. OMBWAYO

JUDGE