



Katumbi (Acting in person and on behalf of all other Decree Holders) v Athi River Marble & Granite Limited & another; Nextgen Auctioneers (Interested Party) (Cause 348, 349, 350, 351, 352, 353, 354, 355, 357, 358, 359, 360, 361, 1018, 1019, 1020, 1022, 1023, 1024, 1025 & 1026 of 2018 (Consolidated)) [2025] KEELRC 3648 (KLR) (17 December 2025) (Ruling)

Neutral citation: [2025] KEELRC 3648 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE 348, 349, 350, 351, 352, 353, 354, 355, 357, 358, 359, 360, 361, 1018, 1019, 1020, 1022, 1023, 1024, 1025 & 1026 OF 2018 (CONSOLIDATED)

B ONGAYA, J

DECEMBER 17, 2025

**IN THE MATTER OF EXECUTION OF DECREE ISSUED
IN FAVOUR OF THE CLAIMANTS/DECREE HOLDERS**

AND

**IN THE MATTER OF AN APPLICATION FOR REVIEW OF THE RULING DELIVERED
ON 13TH NOVEMBER 2025 BY HONOURABLE JUSTICE BYRAM ONGAYA J.**

BETWEEN

**WAMBUA KATUMBI (ACTING IN PERSON AND ON BEHALF OF ALL
OTHER DECREE HOLDERS) DECREE HOLDER**

AND

ATHI RIVER MARBLE & GRANITE LIMITED JUDGMENT DEBTOR

AND

DON WOODS COMPANY LIMITED OBJECTOR

AND

NEXTGEN AUCTIONEERS INTERESTED PARTY

RULING

1. The applicant/decree holders filed a notice of motion dated 03.12.2025 in person. The application was under order 45 rule 1, order 51 rule 1 of the Civil Procedure rules, order 22 rule 51-75 and section 3A & 80 of the *Civil Procedure Act, Judicature Act* and the inherent jurisdiction of the Court and Article



159 of *the Constitution* of Kenya and all other enabling provisions of the law. The applicants seeking the following orders:

- i. Spent.
 - ii. That the Ruling delivered by Hon. Justice Byram Ongaya on 13 November 2025 be reviewed and/or varied solely to the extent that the Court failed to determine the primary and substantive reliefs sought in Prayers 5 and 11 of the notice of motion dated 17th July 2025, which required the Court to address the contemptuous removal of the movable assets and the return or recovery thereof namely:
 - “5. That the Decree Holders be granted leave to re-attach and recover all movable properties (valued at Kshs. 41 million) clandestinely removed from the premises in contempt of court orders issued on 19th and 23rd July 2024.”
 - “11. That the Objector and its directors be found in contempt of court for violating Justice Ongaya’s orders (19th & 23rd July 2024) by removing machinery and be Fined a punitive amount, or imprisoned for contempt under Order 40 Rule 3 of the Civil Procedure Rules, and compelled to return the removed assets or pay Kshs. 40 million as compensation.”
 - iii. That upon review, this Honourable Court be pleased to grant prayers 5 and 11 of the notice of motion dated 17th July 2025 and further order the objector, Don Woods Company Limited, its servants and/or agents to forthwith return the said movable assets or in the alternative pay the decree holders the sum of Kshs. 41,000,000/- being the estimated value thereof.
 - iv. That the objector and/or its directors be cited for contempt of the orders issued on 19th and 23rd July 2024 and punished accordingly.
 - v. Costs be provided for.
2. The application is grounded on the reasons set out therein and supported by the affidavit of Wambua Katumbi, sworn on 03.12.2025. He averred that:
- a. He filed a notice of motion on 17.07.2025 seeking various orders, the primary and most urgent of which were contained in prayers 5 and 11, as reproduced verbatim hereabove.
 - b. The application was premised on the fact that the objector, after obtaining stay orders from this Court on or about 19th and 23rd July 2024, and during the temporary stay granted until 14.03.2025, proceeded in blatant contempt to remove all valuable movable machinery and equipment, approximately worth over Kshs. 41,000,000/- from the charged premises, thereby frustrating execution of the decrees.
 - c. All other prayers in the said application (including winding-up, garnishee, lifting of corporate veil, etc.) were pleaded strictly in the alternative, only to be considered if the primary relief of returning the removed assets could not be realised or granted.
 - d. The matter was fully argued before the Hon. Mr. Justice Byram Ongaya on diverse dates, and a Ruling was delivered on 13.11.2025. However, the learned Judge completely failed to pronounce himself on the primary issue of the contemptuous removal of the movable assets and the reliefs sought in Prayers 5 and 11 of the notice of motion dated 17.07.2025. The Ruling



is wholly silent on whether the objector should return the removed machinery or pay its value, and equally silent on whether the objector and its directors should be punished for contempt of the orders issued on 19th and 23rd July 2024.

- e. This omission constitutes a clear error apparent on the face of the record because the Court failed to determine the very mischief that necessitated the application, thereby denying the decree holders substantive justice.
 - f. The issue of movable properties has been the subject of three objection proceedings, all of which found the transfer fraudulent and the movables attachable. In CMEL No. 525 of 2018, Hon. H.M. Ng'ang'a PM found that attachment can proceed only in respect to the movable property situated on all the property known as Kajiado/NoonKopir/Township/28 in execution of the decree issued. On appeal in ELRCA/E151/2024, the Court agreed with the lower court and found the appeal without merit, dismissing the appeal with costs. Lastly, in this instant consolidated Cause, this Honourable Court ruled on 27.02.2025, dismissing the objector's objection dated 15.07.2024 with costs.
 - g. Despite these three binding decisions, the objector removed the assets before and during the temporary stay, forcing the decree holders to return to Court via the 17.07.2025. Many of the decree holders are aged, sick and indigent former workers who have waited for over eight years for their lawful dues, and the continued possession by the objector of assets removed in contempt renders the decrees unenforceable.
 - h. Unless this Honourable Court urgently reviews the Ruling of 13.11.2025 and grants primary reliefs in prayers 5 and 11, the decree holders will suffer grave and irreparable loss that cannot be compensated by way of costs.
3. In opposition to the application for review, the objector filed a replying affidavit sworn by Donald Mwaura on 08.12.2025, through Kang'ari Ngandu & Company Advocates. They averred as follows:
- i. The instant application is fundamentally barred by the *functus officio* principle because this Honourable Court lost the jurisdiction to alter the substance of the Ruling made on 13.11.2025 once it delivered the decision, save for very limited statutory exceptions for review.
 - ii. Since the said prayers 5 and 11 were fully argued and then explicitly and implicitly denied in the Ruling, the applicant is seeking to persuade the Court to change its mind on a contested issue of law and fact, thereby asking the Court to sit as an appellate court over its own decision.
 - iii. It is not a ground for review that a judge reached an erroneous conclusion of law or that another judge could have taken a different view. The proper recourse for this grievance is an appeal, not a review.
 - iv. The applicant has failed to satisfy the most critical requirement for review: the existence of a mistake or error apparent on the face of the record. To establish that the Court should have granted the contempt or recovery orders requires a re-appraisal of all the evidence presented, including the objector's defence of lawful purchase and lack of connection to the judgment debtor. This confirms that the alleged error is not apparent on the face of the record.
 - v. The request to find the objector and its directors in contempt (prayer 11) is a matter of a quasi-criminal nature that demands a high standard of proof. The applicant was required to prove the alleged disobedience unequivocally.



- vi. The Court’s decision to decline the contempt order signifies a substantive finding that the applicant failed to meet this high standard of proof. Reviewing this finding would force the Court to re-hear and re-evaluate the complex evidence regarding the alleged fraudulent transfer and removal of assets, a function outside the limited scope of review jurisdiction and cannot be justified under Order 45 Rule 1. The applicant has also not pointed out the discovery of a new important matter or evidence that was previously unavailable despite due diligence, thus failing to meet the first limb of Order 45 Rule 1.
 - vii. The objector is a lawful purchaser of the property Kajiado/NoonKopir/Township/28 and consistently demonstrated it was not in contempt.
 - viii. There is no “other sufficient reason” to grant the review, as that limb cannot be used to circumvent the appellate process simply because the applicant is dissatisfied with the result.
4. The applicant is seeking to review the ruling delivered on 13.11.2025. The applicable rule 74 of the Employment and Labour relations Court (Procedure) Rules provides as follows:

“74. Review

- (1) A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling—
 - (a) if there is discovery of a new and important matter or evidence which, despite the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made;
 - (b) on account of some mistake or error apparent on the face of the record;
 - (c) if the judgment or ruling requires clarification; or
 - (d) for any other sufficient reason.
- (2) An application for review of a decree or order of the Court under sub-rule (1) shall be made to the judge who passed the decree or made the order sought to be reviewed or to any other judge if that judge is not attached to the Court station.
- (3) A party seeking review of a decree or order of the Court shall apply to the Court by way of notice of motion supported by an affidavit and shall file a copy of the Judgment or decree or ruling or order to be reviewed.
- (4) The Court shall, upon hearing an application for review, deliver a ruling allowing or dismissing the application.
- (5) Where an application for review is granted, the Court may review its decision to conform to the findings of the review or quash its decision and order that the suit be heard again.(6)An order made



for a review of a decree or order shall not be subject to further review.

5. The applicants do not invoke that applicable rule and it may operate as an impetus for dismissal of the application.
6. Be it as it may, the applicant says that the Court in the ruling dated 13.11.2025 did not deal with the issue of the movable property being attached to satisfy the decree. However, the applicant per paragraph 7(f) in the ruling urged as follows: During the course of hearing of the objector application on or about 25.07.2024, the objector secretly removed all proclaimed machinery in violation of the Court Orders dated 19th and 23rd July 2024 by the Honourable Justice Ongaya, undermining the lawful execution process. The said objection was dismissed with costs on 27.02.2025 on grounds that the issues raised by the objector were substantially similar to those already determined in an appeal Judgement by Abuodha J. in ELRCA/E151/2024 (supra). The said similar objection application, first filed in the Chief Magistrate's Court, and the appeal therefrom (ELRCA/E151/2024), was also dismissed on 24.05.2024 with findings that the objector was a proxy of the judgment debtor and the transfer was fraudulent.
7. The applicant's case was that the property had been removed during a stay order or secretly while the objection proceedings were going on. However the objector's case was that it had purchased the property for which the Court later entered a judgment against the judgment debtor – but which purchase the applicant stated was fraudulent. Now if purchase had been before judgment and objector already registered owner, then, the Court returned it amounted to a fresh cause of action. Those being parties' positions, the Court returned thus at paragraph 6(d) thus, "The land subject of the application has since been transferred from the judgment debtor to the objector in circumstances that the land is charged to the bank which facilitated the objector's purchase price. The applicant alleges fraud in that transaction. It is the view of the Court that the alleged fraud is with respect to a transaction involving a title to land. The Court considers that the same constitutes a new cause of action way beyond the instant application and which alleged fraud can only be established in a proper suit before a Court of competent jurisdiction."
8. The Court while making the foregoing revisiting of the ruling finds for the objector that there would be no error on record because the Court made findings why the application could not be granted including that issues constituted a new cause of action beyond the instant suit. It appears in the application for review the applicant is asking the Court to change its opinion and the reasons for the decision but which matters should go on appeal and not review as done for applicants. That the application was dismissed meant that the reliefs prayed for were declined upon the findings therein.
9. The Court has observed the winding history of the case and no orders on costs.

In conclusion the application is dismissed with no orders on costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS WEDNESDAY 17TH DECEMBER, 2025.

BYRAM ONGAYA

PRINCIPAL JUDGE

