



**Ngumu & another v Kyumbu (Land Case Appeal 4 of 2023)
[2025] KEELC 18373 (KLR) (18 December 2025) (Judgment)**

Neutral citation: [2025] KEELC 18373 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
LAND CASE APPEAL 4 OF 2023
NA MATHEKA, J
DECEMBER 18, 2025**

BETWEEN

PETER MULI NGUMU 1ST APPELLANT

SILA KITONYI 2ND APPELLANT

AND

JAMES MBATHA KYUMBU RESPONDENT

JUDGMENT

1. The Appellant being dissatisfied with the Ruling of Hon. P. May (Vice-Chair) in BPRT No. E809 of 2022) delivered on 26th July, 2023 appeals to this Court at Nairobi against the whole of the above Ruling on the following grounds;
 1. The learned Vice-Chairperson erred in fact and in law in dismissing the Tenant’s/Appellant’s Notice of Motion Application and Reference dated 9th September, 2022 and 3rd April, 2023.
 2. The learned Vice-Chairperson erred in fact and in law didn’t consider illegal eviction which was done by the Respondent on 20th December, 2022 leading to loss and damages of Kshs. 1,642,690 contrary to Cap 301 Laws of Kenya.
 3. The learned Vice-Chairperson erred in fact and in law didn’t direct Quantity Surveyor to establish the magnitude of damages incurred.
 4. The learned Vice-Chairperson erred in fact and in law dismissed the Appellants’ case with costs yet they do not have any accumulated rent arrears having paid rent up to August, 2023 in cash to the Respondent.
2. He seeks the following orders;
 - a. This Appeal be allowed.



- b. The Ruling and decision of the BPRT Court made on 26th July, 2023 be set aside.
 - c. The Notice of Motion Application and Reference dated 9th September, 2022 be allowed.
 - d. Any award by way of compensation amounting to Kshs. 1,642,690 to the Appellants due to illegal auction done by the Respondent on 20th December, 2022 without valid court order.
 - e. The costs of this Appeal and the BPRT Case No. E809 of 2022 be awarded to the Appellants.
3. This court has carefully considered the appeal and submissions therein.
 4. The Respondent submitted that the remedy of review is not available for the Applicant. In the case of *Mwihoko Housing Company Limited vs Equity Building Society (2007) 2 KLR 171* is relevant. It was held, that;

A review could have been granted whenever the Court considered that it was necessary to correct an error or omission on its part. The error or omission must have been self-evident and should not have required an elaborate argument to be established. It would neither have been sufficient ground of review that another Court could have taken a different view of the matter nor could it have been a ground that the Court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or another provision of law could not have been a ground for review. There was no discovery of a new and important matter or evidence which after due diligence was not within the knowledge of the appellant at the time the judgment and decree was passed. There was no error apparent on the face of the record or any other sufficient reason to justify review. In the Court of Appeal decision of *Rose Kaiza Vs Angelo Mpanju Kaiza 2009*, the Court was categorical that;

“An application for review under order 44 Rules 1 of the Civil Procedure Rules must be clear and specific on the basis upon which it is made...”

Order 45, Rule 1(b) is clear that for the court to review its decision, certain requirements should be met. This section 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.
- (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the



appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.”

5. The aforesaid rule is based on section 80 of the *Civil Procedure Act*, Cap. 21 Laws of Kenya which states as follows:

Any person who considers himself aggrieved-

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

may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

6. Under Section 80 of the *Civil Procedure Act*, the court has unfettered discretion to make such orders as it thinks fit on sufficient reason being given for review of its decision. However, this discretion should be exercised judiciously and not capriciously. In *Court of Appeal, Civil Appeal No. 211 of 1996, National Bank of Kenya vs Ndungu Njau*, the Court of Appeal held that;

A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self evidence and should not require an elaborate argument to be established. It will not be sufficient ground for review that another Judge could have taken a different view of the matter nor can it be a ground for review that the court proceed on an incorrect expansion of the law”

7. From the above provisions of the law, authorities cited and facts of this case the applicant stated that the illegal eviction which was done by the Respondent on 20th December, 2022 leading to loss and damages of Kshs. 1,642,690 Contrary to Cap 301 Laws of Kenya. The Tribunal did not direct Quantity Surveyor to establish the magnitude of damages incurred. That the Tribunal dismissed the Appellants’ case with costs yet they do not have any accumulated rent arrears having paid rent up to August, 2023 in cash to the Respondent. I have perused the court file and find that the application proceeded by way of written submissions. The Vice Chair of the Tribunal ordered the Appellant to pay Kshs. 14,000/= by close of business that day failure to which execution to issue. I see no new evidence that was adduced or any omission/error on the face of the record. I concur with the Respondent’s submissions that this matter and the application dated 3rd April 2023 cannot fulfill the elements for granting a review. I find that there was no sufficient cause in this case for the Tribunal to review its ruling. I find this appeal is not merited and I dismiss it with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 18TH DAY OF DECEMBER 2025.

N.A. MATHEKA

JUDGE

