



**Conrad Law Advocates Llp & another v Jinnah; Jinnah & 2 others
 (Interested Parties) (Employment and Labour Relations Cause
 E942 of 2024) [2026] KEELRC 179 (KLR) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEELRC 179 (KLR)

**REPUBLIC OF KENYA
 IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
 EMPLOYMENT AND LABOUR RELATIONS CAUSE E942 OF 2024
 BOM MANANI, J
 JANUARY 29, 2026**

BETWEEN

CONRAD LAW ADVOCATES LLP 1ST CLAIMANT

CONRAD MALOBA T/A CONRAD MALOBA & ASSOCIATES 2ND CLAIMANT

AND

NAZIR BHADURALLI NURMOHAMMAD JINNAH RESPONDENT

AND

SHIROZ JINNAH INTERESTED PARTY

KAYCIA NAZIR JINNAH INTERESTED PARTY

KIAN JINNAH INTERESTED PARTY

RULING

1. The Respondent in the suit has filed the application dated 27th February 2025 through which he prays for the following orders:-
 - a. Spent.
 - b. Spent.
 - c. Spent.
 - d. That the court sets aside, vacates and or otherwise reviews the order which it issued on 13th February 2025.
 - e. That in the alternative and without prejudice to the above prayer, the court issues an order of status quo ante before the impugned order was issued.



- f. That the court gives directions on costs of the application.
2. The application is anchored on the grounds set out on the face of it. It is also supported by the affidavit and supplementary affidavit sworn by the Respondent in the suit dated 28th February 2025 and 30th September 2025 respectively.
 3. Essentially, the Respondent contends as follows:-
 - a. That the impugned order has frustrated the 1st to 3rd Interested Parties' movement and frustrated his (the Respondent's) ability to maintain his family which is against the best interest of some of the parties.
 - b. That the immovable property which is affected by the order namely Kiambu/Municipality Block 6/233 does not belong to him.
 - c. That there is an error apparent on the face of the record since motor vehicles registration numbers KDH 252H, KCX 555K and KBV 919X which are included in the order belong to the Interested Parties and are not within his control.
 - d. That besides, attachment of the aforesaid three motor vehicles infringes on vested property rights of the Interested Parties.
 - e. That there is an error apparent on the face of the record since motor vehicles registration numbers KDM 356E and KBQ 513U are currently under the control and possession of a third party and hence cannot be delivered to the court precincts as required by the order.
 - f. That the impugned order is draconian and did not take into account the need to protect the assets in question from the vagaries of the weather during the conduct of the case.
 4. The Respondent contends that he only has a leasehold interest in the aforesaid immovable property. As such, he avers that the property should not have been attached.
 5. The Respondent avers that he had not secured copies of the said property's records at the time the application which gave rise to the impugned order was heard and determined because the records had allegedly been secured from the public and could only be procured through a court order. He further avers that he was in any event out of the country at the time after the Directorate of Criminal Investigations had placed him on its watch list following an unfounded complaint lodged by the Claimants. As such, he contends that he could not present the records to court.
 6. The Respondent avers that motor vehicles registration numbers KDH 252H, KCX 555K and KBV 919X were transferred to the Interested Parties approximately five (5) months before this suit was filed. As such, he contends that the vehicles should not have been affected by the attachment order as this infringes on vested property rights.
 7. The Respondent asserts that he purchased motor vehicle registration number KCX 555K from proceeds of sale of another vehicle registration number KCT 555K. As such, he avers that the vehicle should not have been included in the list of the vehicles to be attached.
 8. The Respondent also contends that the amounts in dispute are associated with two different entities. As such, he avers that it was wrong for the court to treat the said amounts as belonging to one entity.
 9. In the further affidavit, the Respondent asserts that he has since been cleared of the allegations which the Claimants made against him to the Directorate of Criminal Investigations. He contends that had the court's attention been drawn to this fact, it would not have issued the impugned order.



10. The Respondent reiterates that the impugned order is disproportionate and manifestly oppressive. He contends that there are less restrictive means which the court should have deployed to secure the Claimants' interests including an order to restrict the disposal of the attached assets.
11. The Respondent asserts that to detain the vehicles at the court yard will occasion their deterioration which will defeat the very purpose of the order for attachment. He contends that he has sufficient reasons to warrant review and setting aside of the impugned order. He further contends that the Claimants obtained the order in a bid to settle personal scores.
12. The Respondent avers that attachment before judgment is an extraordinary relief which should only be granted in the clearest of cases. He contends that where it is demonstrated that the relief was procured through misrepresentation, the order should be set aside.
13. The Claimants have opposed the application. They contend as follows:-
 - a. That there is no error on the face of the record which the Respondent has pointed to.
 - b. That the application does not meet the threshold for a motion for review.
 - c. That the issues which the Respondent has raised in support of the instant application ought to have been raised in opposition to the application which resulted in issuance of the impugned order.
 - d. That the Respondent has not pointed to any facts which were not within his knowledge despite the exercise of due diligence at the time the earlier application was heard and which would have impacted the court's decision.
 - e. That the grounds which the Respondent has raised in support of the application are suitable for appeal against and not review of the impugned ruling. As such, they contend that the application is an appeal disguised as a review motion.
 - f. That the Respondent is inviting the court to reopen a matter which it (the court) has conclusively determined against the functus officio principle.

Analysis

14. The court notes that after the impugned order was issued, one Andrew Jacob Toro filed an application dated 13th March 2025 through which he sought to lift the attachment of Kiambu/Municipality Block 6/233. On 30th April 2025, the court lifted attachment of the aforesaid property after the Claimants signified their non-objection to Andrew Toro's application. As such, this property is no longer under attachment.
15. That being the case, the Respondent's prayer to lift attachment of the aforesaid property has been overtaken by events. As such, the court will not adjudicate on the matter for that will be an exercise in futility.
16. The court also notes that after the Respondent filed the instant application seeking to lift attachment of some of the motor vehicles which are registered in the names of the Interested Parties, the Interested Parties appointed a lawyer to independently represent them in the suit with effect from 10th March 2025. Despite this, they did not file an affidavit to support the Respondent's request.



17. The law on review of the court's decisions is encapsulated in rule 74 of the Employment and Labour Relations Court (Procedure) Rules, 2024. Rule 74(1) provides as follows:-

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.”
18. The Respondent's request to review the court's decision appears to be premised on: the presence of an error apparent on the court record; the discovery of a new and important matter which could not be presented to court despite the exercise of due diligence by him; and the fact that there is sufficient reason to review the decision.
19. Regarding the presence of an error on the face of the record, the Respondent contends, inter alia, that the court did not consider that the three motor vehicles registration numbers KDH 252H, KCX 555K and KBV 919X are registered in the names of the Interested Parties. As such, he contends that the court failed to appreciate that he has no control over the said vehicles and cannot deliver them to the court precincts as required by the order.
20. The Respondent further contends that there is an error apparent on the face of the record since motor vehicles registration numbers KDM 356E and KBQ 513U are under the control and possession of a third party. He contends that the court failed to appreciate that the order requiring that the said vehicles be delivered to the court precincts cannot be implemented because of this reason.
21. What the Respondent describes as an error apparent on the court record does not, in my view, constitute an error on the face of the record. An error on the face of the record was defined in the case of *Nyamogo and Nyamogo Advocates Vs. Kago* (2001) 1EA 173 to mean the following:-

An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is a real distinction between a merely erroneous decision and an error apparent on the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by a long drawn process of reasoning or on points where there may conceivably be two opinions, can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was also possible. Mere error or wrong view is certainly no ground for review although it may be for an appeal.”

22. The Respondent contends that there is an error on the face of the record because the court did not take into account the fact that some of the motor vehicles which it ordered to be attached are registered



in the names of the Interested Parties whilst the others are held by third parties. If I understand him well, what the Respondent is simply saying is that the court made an erroneous decision by failing to appreciate that the impugned order cannot be enforced against the Interested Parties and the alleged third parties since they are either not party to the suit or are not principal parties to the litigation. This, in my view, does not denote an error apparent on the face of the record but an alleged erroneous decision by the court because of failure to properly appreciate the legal principle that orders in a suit cannot be enforced against third parties. This cannot justify an application for review.

23. Alluding to this reality, the court in the case of Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] KEHC 6379 (KLR) stated as follows:-

There is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by 'error apparent'. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected. A review lies only for patent error where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.”

24. The court does not agree with the Respondent’s assertion that there is an error apparent on the face of the record for two reasons. First, before issuing the impugned order, the court was persuaded that the three vehicles now registered in the names of the Interested Parties were initially owned by the Respondent but were transferred to the Interested Parties under circumstances which suggested that the impugned transfers were intended to defeat enforcement of any possible judgment in favour of the Claimants against the Respondent in the case. As such, at the time of issuing the order, the court was aware that the vehicles were in the names and custody of the Interested Parties. However, it was persuaded that the intention of their transfer to the Interested Parties was suspect. Consequently, the Respondent’s contention that the court did not consider that the vehicles were owned by the Interested Parties before it issued the order is misguided.
25. Second and with regard to motor vehicles registration numbers KDM 356E and KBQ 513U, the Respondent did not object to issuance of the impugned order on the ground that the vehicles were held by a third party and could not be released to court because of this. Although he contended that the vehicles were illegally detained at the basement of English Point Marina, it was not his case that they could not be released to court because of the alleged illegal detention. He only flagged the issue of detention of the two vehicles to support his contention at the time that the detention was part of a wider scheme by the Claimants and or their agents to disenfranchise him of his property or to ensure that the property goes to waste.
26. If the Respondent’s position at the time was that he could not deliver the two vehicles to court because they were allegedly under the custody of a third party, he ought to have raised this in response to the application for attachment before judgment. As the record shows, he did not.
27. The Respondent cannot now seek to turn tables and accuse the Claimants of failure to disclose that the two motor vehicles could not be delivered to court because they were in the custody of a third party. The duty lay on him and not the Claimants to disclose and establish this assertion.
28. However, even assuming that the two vehicles are in the custody of a third party, this does not change the fact that the legal title to them still vests in the Respondent. As such, once the impugned order was issued, the third party was bound to deliver the vehicles to court or apply as may be appropriate. So far, there has been no application by the alleged third party. In the premises, the Respondent’s request fails.



29. Regarding discovery of a new and important matter which warrants review of the impugned order, the Respondent contends that the Directorate of Criminal Investigations has since cleared him of the accusations which the Claimants had leveled against him. It is his case that had the court been notified of this fact, it would not have issued the impugned order.
30. The documents which the Respondent relies on to support this argument were issued in May and July 2025 long after the court had issued the impugned order. As such, they do not constitute matters which were in existence at the time the impugned order was issued but which the court could not be appraised about despite the exercise of due diligence.
31. Importantly, the clearance by the Directorate of Criminal Investigations does not negate the fact that the Respondent's departure from the court's jurisdiction before the impugned civil order was issued implied an intention on his part to defeat enforcement of any court decree against him in favour of the Claimants. As such, the subsequent lifting of the red notice against him cannot, of itself, be reason to review and set aside the impugned order.
32. The Respondent contends that he otherwise has sufficient reasons to review the impugned orders. He avers that the order is draconian and was issued without considering the inconvenience that it will occasion the Interested Parties. It is his case that the order will affect the movement of the Interested Parties.
33. The Respondent further contends that the attached vehicles will waste away if they are stored at the court premises. He also argues that the order will make it difficult for him maintain his family.
34. The Respondent contends that the court did not consider these factors whilst rendering the impugned decision. Yet, he provides no basis for this supposition.
35. An analysis of the application dated 27th February 2025 leaves the court with no doubt that the Respondent is simply inviting it to reopen the application dated 4th November 2024 to enable him to re-litigate it. This is not permissible.
36. The doctrine of *functus officio* forbids the court from re-opening a matter which it has considered on the merits and closed. To do otherwise will be tantamount to the court sitting on appeal on its own ruling.
37. In the court's view, the matters which the Respondent has raised in the instant application ought to have been raised in an appeal against the impugned ruling. A wrong appreciation of a legal principle by a trial court can only be a ground for appeal and not an application for review.
38. Whether the court misapplied its mind to the law and facts: by ordering property which is alleged to be in the custody of third parties to be attached before judgment; by ordering attachment before judgment without considering that such order was oppressive, disproportionate and draconian; by failing to consider less draconian remedies; by issuing the impugned order without considering that it will impede the movement of the Interested Parties and the ability of the Respondent to fend for his family; and by failing to consider that the impugned order will lead to the attached assets wasting away, are all matters which justify an appeal against the decision; not a motion for review.
39. Underscoring this fact, the court in the case of *Republic -vs- Advocates Disciplinary Tribunal Ex parte Apollo Mboya* (*supra*) expressed itself as follows:-

.....an order, decision, or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on



a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.....

...The power of review is available only when there is an error apparent on the face of the record. I emphasize that review proceedings are not an appeal. The review must be confined to error apparent on the face of the record and re-appraisal of the entire evidence or how the judge applied or interpreted the law would amount to exercise of Appellate Jurisdiction, which is not permissible.”

40. The court is not entitled to re-open a matter it has fully considered and decided in order to evaluate it a fresh under the guise of a motion for review. Speaking to this fact in the case of National Bank of Kenya Limited vs Ndungu Njau [1997] KECA 389 (KLR), the Court of Appeal observed as follows:-

In the instant case the matters in dispute had been fully canvassed before the learned Judge. He made a conscious decision on the matters in controversy and exercised his discretion in favour of the respondent. If he had reached a wrong conclusion of law, it could be a good ground for appeal but not for review. Otherwise we agree that the learned Judge would be sitting in appeal on his own judgment which is not permissible in law. An issue which has been hotly contested as in this case cannot be reviewed by the same court which had adjudicated upon it.”

Determination

41. The upshot is that the court arrives at the conclusion that the application dated 27th February 2025 is unmerited.
42. As such, it is dismissed with the consequence that the orders which the court issued on 13th February 2024 remain in force save that the order for attachment of Kiambu/Municipality Block 6/233 has been lifted as earlier mentioned in the ruling.
43. Costs of the application shall be in the cause.

DATED, SIGNED AND DELIVERED ON THE 29TH DAY OF JANUARY, 2026

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Claimants

.....for the Respondent

.....for Interested Parties

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

