



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYANDARUA**

**JUDICIAL REVIEW NO. E002 OF 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**VERSUS**

**THE CHIEF OFFICER, DEPARTMENT OF TRADE, COOPERATIVES**

**DEVELOPMENT AND INDUSTRIALIZATION OF THE COUNTY GOVERNMENT OF**

**NYANDARUA.....1<sup>ST</sup> RESPONDENT/APPLICANT**

**COUNTY GOVERNMENT OF NYANDARUA..... 2<sup>ND</sup> RESPONDENT/RESPONDENT**

**THE HON. ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**AND**

**GEDION RUBIA MWANGI..... EX PARTE APPLICANT/RESPONDENT**

**RULING**

1. The applicant herein moved the court through a Notice of Motion dated the 5<sup>th</sup> day of November 2025. It was brought under sections 1A, 1B, & 80 of the Civil Procedure Act, Order 45 Rule 1(1) & (2) of the Civil Procedure Rules and Article 50 (1) of the Constitution of Kenya. The applicant is seeking that this court be pleased to review, vary, vacate, discharge and or set aside its judgment delivered on 24<sup>th</sup> September 2025.
2. The application was premised on the following grounds:
  - a) The matter was initiated by the applicant by way of a certificate of urgency, notice of motion application, and a supporting affidavit by Gedion Mwangi Rubia all dated 10<sup>th</sup> April, 2025 seeking for orders of Certiorari to quash the decision of 1<sup>st</sup>

respondent dated 25<sup>th</sup> March 2025 purporting to convene a special meeting of Ngorika Farmers Co-operative Society scheduled for 11<sup>th</sup> April, 2025.

- b) This honourable court gave orders on 10<sup>th</sup> April, 2025, directing the applicant to serve the responses and the respondents to file a response.
- c) The 1<sup>st</sup> and 2<sup>nd</sup> respondents filed and served their response dated 16<sup>th</sup> May, 2025 on the 19<sup>th</sup> May, 2025 respectively.
- d) On the 20<sup>th</sup> May, 2025, Mr Mugo Gachambi represented the 1<sup>st</sup> and 2<sup>nd</sup> respondents/Applicants, confirmed in court filing the same.
- e) The court noted in its judgment that the 1<sup>st</sup> and 2<sup>nd</sup> respondents neither filed their response nor their submissions.
- f) The five (5) above were a mistake occasioned by the court filing system, which indicated two cases with the same numbers and parties, i.e., HCJR/E002/2025 and HCRMIS/E002/2025.
- g) The respondents, having been served by the applicant with pleadings cited HCRMIS/002/2025, the respondent got mapped under the same case and used the same number to file the response and the submissions.
- h) This fact can be checked on the CTS to confirm that the 1<sup>st</sup> and 2<sup>nd</sup> respondents filed their response and submissions on 19<sup>th</sup> May, 2025 and 20<sup>th</sup> May 2025, respectively.
- i) The court noted in its judgment that on the 23<sup>rd</sup> June 2025, Mr Mugo Gachambi was present for mention to confirm filing, but didn't respond.
- j) This was attributed to technological challenges with his devices, as power dropped just when the matter was called.
- k) The said advocate also filed a physical copy of the submission in the court registry, just in case the court did not know whether the respondents had filed their submission as a result of the 10 above.
- l) During the said date, a judgment date was taken.
- m) The CTS was not updated to show the judgment date.
- n) An office clerk visited the court registry several times but got no update as a result of the confusion in the two files HCJR/E002/2025 and HCJRMISC. /E002/2025.
- o) The 1<sup>st</sup> and 2<sup>nd</sup> respondents' advocate learnt of the judgment through the applicant's counsel, who shared a copy by email on 29<sup>th</sup> October 2025.

- p) Thus, it is in the larger interest of justice and the public that this application be allowed to have the respondents' response and submissions considered in the judgment.
  - q) The 1<sup>st</sup> and 2<sup>nd</sup> respondents' prayer to this honourable court to review and or set aside its judgment delivered on 24<sup>th</sup> September 2025 based on the sufficient reason(s) as expounded above.
3. The respondent opposed the application on the following grounds:
- a) This court is functus officio.
  - b) The applicants have not met the statutory threshold for review under 45 of the Civil Procedure Rules.
  - c) The matters raised were previously within the knowledge of the applicants.
4. To request a review of a judgment or previously issued orders, a party must prove that there is a clear error in the record or that new, significant evidence or issues have been discovered, despite due diligence, that were not known or could not have been presented at the time the decree was made. In this case, the applicant has not demonstrated that he qualifies under Order 45 of the Civil Procedure Rules.
5. Order 45 Rule 1 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.*

6. The applicants have not demonstrated any error on the face of the record. The averments blaming the system are not errors on the face of the record. The error must be self-evident. The court in **National Bank of Kenya Limited vs Ndungu Njau [1997] eKLR**, stated:

*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-evident and should not require an elaborate argument to be established.*

7. No evident error was pointed out in this case. Neither is there any sufficient reason which has been advanced to compel this court to review the impugned judgment. To do so will be in breach of the doctrine of *functus officio*.

8. The Black's Law Dictionary, tenth (10th) Edition describes *functus officio* as: -

*[having performed his or her office]" (of an officer or official body) without further authority or legal competence because the duties and functions of the original commission have been fully accomplished.*

9. In **Raila Odinga & 2 Others vs. Independent Electoral & Boundaries Commission & 3 Others [2013] EKLR**, the Supreme Court cited with approval an excerpt from an article by Daniel Malan Pretorius entitled, "**The Origins of the Functus Officio Doctrine, with Special Reference to its Application in Administrative Law**" (2005) 122 SALJ 832, which reads:

*...The functus officio doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality. According to this doctrine, a person who is vested with adjudicative or decision-making powers may, as a general rule, exercise those powers only once in relation to the same matter...The [principle] is that once such a decision has been given, it is (subject to any right of appeal to superior body or functionary) final and conclusive. Such a decision cannot be reviewed or varied by the decision maker.*

10. At paragraph 19 in the Raila Case (Supra), the Court further stated:

*This principle has been aptly summarized further in Jersey Evening Post Limited v. A1 Thani [2002] JLR 542 at 550:*

*“A court is functus when it has performed all its duties in a particular case. The doctrine does not prevent the court from correcting clerical errors, nor does it prevent a judicial change of mind even when a decision has been communicated to the parties. Proceedings are only fully concluded, and the court functus, when its judgment or order has been perfected. The purpose of the doctrine is to provide finality. Once proceedings are finally concluded, the court cannot review or alter its decision; any challenge to its ruling on adjudication must be taken to a higher court if that right is available” [Emphasis added]*

11. Based on the foregoing, it is clear that the application lacks merit. Consequently, it is dismissed with costs.

**Delivered and signed at Nyandarua, this 19<sup>th</sup> day of February 2026**

**KIARIE WAWERU KIARIE  
JUDGE**