

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

CONSTITUTION PETITION NO. E016 OF 2022

**IN THE MATTER OF: THE PROPOSED DEVELOPMENT OF
18 FLOOR STOREY BUILDING ON
PLOT NUMBER MOMBASA/
BLOCKXXVI/ 595**

**IN THE MATTER OF: VIOLATION OF ARTICLE 10,40,42,47
& 69 OF THE CONSTITUTION OF
KENYA**

BETWEEN

**MOHAMED AHMED ABDALLA 1ST PETITIONER
SALIM SAID 2ND PETITIONER
AMIN S. SALIM 3RD PETITIONER
ABDULLAZIZ ABBAS 4TH PETITIONER
RISHAD A.S 5TH PETITIONER
BHARAT DEVIDAS VAITHA 6TH PETITIONER
KETAN DOSHI 7TH PETITIONER**

VERSUS

**KHANSA DEVELOPERS LIMITED 1ST RESPONDENT
RAMESH CHANDRA HARIA 2ND RESPONDENT**

COUNTY GOVERNMENT OF MOMBASA 3RD
RESPONDENT
NATIONAL ENVIROMENT MANAGEMENT
AUTHORITY 4TH RESPONDENT

RULING

1. By the Notice of Motion dated 9th October 2025 Khansa Developers Limited (the 1st Respondent) prays for an order that the Court be pleased to review, vary and/or set aside the Ruling delivered herein on 25th September 2025.
2. The application which is supported by two Affidavits sworn by the 1st Respondent's director Sammy Kamui Mukuri is premised on the grounds inter alia, that:
 - a) The 1st Respondent fulfilled the conditions set out by the Court on 30th April 2024;**
 - b) The Petitioner had filed an earlier application dated 31st May 2024 but the same was dismissed on 18th November 2024 after the 1st Respondent demonstrated that it had adhered to the conditions set by the Court;**
 - c) Though the 1st Respondent referred to the foregoing position in paragraphs 9 and 10 of its**

Replying Affidavit to the contempt application, the material had escaped the attention of the Court;

d) That indeed the 1st Respondent entered the site in January 2025 after ensuring that all the necessary fresh licenses had been granted;

e) That the 1st Respondent has sufficient reasons for seeking the orders herein and it is in the interest of justice that this application be allowed; and

f) That this application is made in good faith as there is an error apparent on the face of the record in that the evidence that these processes were carried out is captured in the Ruling of 18th November 2024.

3. The Petitioners are opposed to the application. In a Replying Affidavit sworn on their behalf on 22nd October 2025 by Mohamed Ahmed Abdalla (the 1st Petitioner), they aver that the application is an abuse of the Court process and an attempt to invite the Court to sit on appeal in its own Ruling delivered on 25th September 2025. In addition, the Petitioners aver that the application does not satisfy the conditions given in law for review of orders.

4. The Petitioners aver that the Environmental Impact Assessment Report dated 29th May 2024 and the Environment Impact License dated 11th December 2024 as well as the construction permits from the 3rd and 4th Respondents were never produced earlier even though they were in the 1st Respondent's possession during the contempt proceedings. It is their case that the 1st Respondent is attempting to repackage old evidence previously withheld in order to evade the consequences of non-compliance and that the same cannot be used to fill evidentiary gaps.
5. I have carefully perused and considered the 1st Respondent's application as well as the response thereto by the Petitioners. I have similarly perused and considered submissions placed before the Court by the Learned Advocates representing the parties.
6. By the instant application, the 1st Respondent has sought for an order that this Court be pleased to review, vary and/or set aside the Ruling delivered by this Court on 25th September 2025. It is their case that they had complied with the orders issued by this Court on 30th April, 2024 and that there was

therefore an error apparent on the record in the orders issued on the said date.

7. The Petitioners on their part are opposed to a review of the said orders. According to the Petitioners, the 1st Respondent's application does not satisfy the legal threshold for the grant of an order of review and the same should henceforth be rejected by this Court as it is tantamount to the Court being asked to sit on an appeal in its own decision.
8. On matters review, Section 80 of the Civil Procedure Act provides thus:

“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.”

9. On the other hand, Order 45 Rule 1(1) of the Civil Procedure Rules, 2010 sets out the grounds for review and 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.”

10. As the Court of Appeal did state in the case of ***National Bank of Kenya Limited -vs- Ndung'u Njau (1997)***

eKLR:

“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. It will not be a 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 proceeded on an incorrect exposition of the law.”

11. The genesis of the application before the Court is the Ruling delivered by the Honorable Justice L.L. Naikuni on 30th April 2024. That Ruling was the result of a Notice of Motion dated 26th July 2023 by which the 1st Respondent had sought for a review of the judgment delivered by the Learned Judge on 22nd February 2023. In the said Ruling delivered as aforesaid, the Learned Judge did set aside the Judgement on the following conditions:

- (i) That the proposed development of 18 floors storey building on Plot No. Mombasa/Block XXVI/595 be reduced to 16 Floors and that it be in compliance with the provisions of Articles 10, 40, 42 and 69 of the Constitution of Kenya; and**
- (ii) That there be a fresh Environmental Impact Assessment Report in accordance with the provisions of Section 58 (b) of the EMCA, 1999 to be prepared and issued by NEMA within the next 30 days and that there shall be a new development plan prepared by the County Government of Mombasa's Physical Planner to ensure that there are stringent environmental and construction safety precautionary measures in place.**

12. Subsequently and by another Notice of Motion application dated 26th February 2025, the Petitioners sought to have the Respondents committed to civil jail for violating the said orders. By the said application, the Petitioners accused the 1st and 2nd Respondents of resuming construction on the suit property without complying with the conditions issued by the Court. In addition, it was the Petitioners' case that rather

than enforce the said orders, the 3rd and 4th Respondents facilitated the continuation of the construction by purporting to regularize the approvals which had been revoked by the Court.

13. Having considered that application and in a Ruling delivered on 25th September 2025, this Court allowed the application and issued a temporary order of injunction restraining the 1st and 2nd Respondents from proceeding with any further development on the suit property until full compliance with the conditions set out by the Court in the Ruling dated and delivered on 30th April 2024. In addition, the Court did find the directors of the 1st Respondent guilty of willful disobedience of the said orders and issued summons requiring the said directors to appear in Court for purposes of mitigation and sentencing.

14. By this present application, the 1st Respondent urges the Court to review the orders issued on 25th September 2025 on account that they had fulfilled the conditions set out by the Court on 30th April 2024 and that:

(i) A fresh public participation was carried out on 28th May, 2024;

- (ii) A fresh licence was issued by NEMA on the 11th December, 2024;**
- (iii) A fresh development permit was issued by the County Government of Mombasa on the 21st June, 2024; and**
- (iv) A fresh Certificate of Compliance was issued by the National Construction Authority on 20th December, 2024.**

15. The basis for this Court's findings that the Respondents had not complied with the orders issued on 30th April 2024 can be discerned from paragraphs 15 and 16 of the Ruling delivered on 25th September 2025 wherein this Court stated as follows:-

“15. At paragraph 8 of the Replying Affidavit of Sammy Kimuio Mukiri the 1st Respondent's director avers as follows:

“8. That the 1st Respondent has always acted in good faith and adhered to the directions given by the Court on 30th April, 2024.”

16. From the record however, there was nothing to back that assertion. The 1st Respondent has not exhibited any fresh EIA Report obtained from the 4th Respondent as directed by the Court. Neither has the Respondent exhibited any fresh application that it made to the 3rd and 4th Respondents for development approvals for the proposed development of the 16 storey building as ordered by the Court.”

16. In reaction to that finding, the 1st Respondent has in the application before me asserted as follows at paragraphs 3 to 5 of the Supporting Affidavit of Sammy Kamuio Mukuri:

“3. That it was the Honorable Court’s position that the 1st Respondent had not exhibited any fresh EIA Report nor evidence of fresh application for a new development permit to the County Government of Mombasa;

4. That incidentally, the Courts’ position was a mistake apparent since these documents had been presented in the 1st Respondent’s Replying Affidavit dated 11th June 2024 at Paragraphs 9 and 10 thereof, which inter-

alia led to the dismissal of the Applicant's Notice of Motion dated 30th May 2024 vide this Court's Ruling of 18th November 2024; and

5. That the 1st Respondent had annexed the aforesaid Court Ruling as annexure "SKM-3" and the Ruling captured some of the above evidence at paragraph 6 (i), (j) and (l) of its Ruling. (Annexed hereto and marked "SKM-3" is a copy of the Court ruling of the 18th November 2024.)"

17. Having now perused the Ruling delivered on 18th November 2024 it became apparent that after the Ruling delivered by Justice Naikuni on 30th April 2024, the Petitioners had instituted another application dated 31st May 2024 urging the Court to review the Ruling delivered on 30th April 2024 on account inter alia, that there was an error apparent on the face of the record.

18. A perusal of the said paragraphs 6 (i), (j) and (l) of the Ruling reveals that the Court already did take note that as earlier ordered by the Court, a fresh EIA Report had been prepared and submitted to NEMA on 29th May 2024 and that a process

of public participation had been conducted on 28th May 2024 while other processes ordered by the Court were on course.

19. In support of that position, the 1st Respondent has at paragraph 6 of the Supporting Affidavit to this application annexed letters inviting the Petitioners to a public participation forum on 28th May 2024 and the minutes of the meeting. In addition, the 1st Respondent has annexed a copy of the EIA Report submitted to NEMA on 29th May 2024, a copy of a fresh development permit issued by the County Government of Mombasa on 21st June 2024, a copy of a fresh licence issued by NEMA on 11th December 2024 and a copy of a certificate of compliance issued by the National Construction Authority on 20th December 2024.
20. Arising from the foregoing I was persuaded that as the time the application for contempt was made, the Respondents had more or less complied in full with the conditions given by the Court on 30th April 2024 and that the finding that there was nothing to back their assertion of compliance was made in error.

21. While the Petitioners contended that by producing the said documents the 1st Respondent was trying to repackage old evidence to evade the consequences of non-compliance, I was unable to find any basis upon which I could come to the conclusion that what was placed before the Court was old and/or repackaged. While the Court had found that the 1st Respondent had failed to exhibit evidence of compliance, it was apparent that there was evidence part of which had earlier been exhibited in these same proceedings.
22. As the Court of Appeal did find in the case of ***National Bank of Kenya Limited -vs- Ndungu Njau (Supra)***, 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. This is one such case where the Court considers it necessary to correct an error apparent on the face of the record.
23. The upshot is that this Court finds merit in the Notice of Motion dated 9th October 2025. I allow the same, set aside the orders issued on 25th September 2025 and hereby

substitute the same with an order dismissing the Petitioners
Notice of Motion dated 26th February 2025.

24. Each party shall bear their own costs.

25. It is so ordered.

**Ruling dated, signed and delivered in open court and
virtually at Mombasa this 5th day of March, 2026.**

.....
**J.O. OLOLA
JUDGE**

In the presence of:

- a) Ms. Firdaus Court Assistant.
- b) Ms. Indensia holding brief for Mr. Bwire Advocate for the
Petitioners
- c) Mr. Makau Advocate for the Respondents