

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ELC APPEAL NO. 54 OF 2008

ELIUD MAITHYA KILILI:.....APPELLANT

VERSUS

WAMBUA MUSOMBA:.....1ST RESPONDENT

NZEMBA MUSOMBA:.....2ND RESPONDENT

RULING

The application is dated 10th November 2025 and is brought under Sections 1A, 1B, 3A,80 &99 of The Civil Procedure Act (Cap 21) Laws of Kenya, Order 21 Rule 3(3), Order 45 & Order 51 Rule 1 of The Civil Procedure Rules 2010 seeking the following orders;

1. The Judgement dated and delivered on 24th March 2017 by Hon. Justice Oscar. A. Angote be amended and/ or reviewed in terms of the 1st and 2nd Respondents' names to read: - WAMBUA MUNGUTI alias WAMBUA MUSOMBA & ANNA NZEMBA MUNGUTI alias NZEMBA MUSOMBA respectively in accordance with their National Identification Cards respectively.
2. Costs of this Application be provided for.

It is based on Grounds that in pursuance of the Judgment dated 24th March 2017, the 1st and 2nd Respondents' names are captured as WAMBUA MUSOMBA & NZEMBA MUSOMBA respectively. However, according to the abovementioned Respondents' National Identification Cards respectively, their names are WAMBUA MUNGUTI & ANNA NZEMBA MUNGUTI respectively. The aforesaid error apparent on record was occasioned by a mistake made by the Appellant while instituting the Appeal herein. That the 1st & 2nd Respondents' names should be corrected to read; WAMBUA MUNGUTI alias WAMBUA MUSOMBA & ANNA NZEMBA MUNGUTI alias NZEMBA MUSOMBA respectively. It is in the interest of justice that the above judgment be amended and/or reviewed as prayed. It is further supported by the Affidavit of WAMBUA MUSOMBA & NZEMBA MUSOMBA.

This court has considered the application and the supporting affidavit. The same was served on the Respondent but he filed no reply. 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.”

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.”

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”.

The Applicants stated that the error was orchestrated by the Appellant when he filed the appeal. They attached their identification cards ID number 626289 in the name of Wambua Munguti issued in Machakos on the 14th January 2016 and ID

number 37564856 in the name of Anna Nzemba Munguti issued in Makueni on the 14th September 2018. From the above provisions of the law, authorities cited and facts of this case I find that the application is merited and I grant the same with no orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 24TH DAY OF MARCH 2026.

N.A. MATHEKA

JUDGE