



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
CORAM: F. MUGAMBI, J
CIVIL CASE NO. E408 OF 2019

BETWEEN

SARAH WANGARI KANGARI

*(suing as the administratrix of the Estate of the
Late JOSEPH KANGARI MUHU)*
PLAINTIFF

VERSUS

SERAH MWERU MUHU *(sued as the administratrix of the
Estate of the*

late JAMES MUHU KANGARI)1ST
DEFENDANT

J.M. KANGARI & J.K. MUHU INVESTMENTS

COMPANY LTD 2ND
DEFENDANT

VARIANT REALTORS LTD 3RD
DEFENDANT

AND

JAMES MUHU KANGARI 1ST INTERESTED
PARTY TIMOTHY KAMAU KANGARI 2ND
INTERESTED PARTY

RULING

Background and introduction

- 1.** This Court, in its Ruling dated and delivered on 8th November 2024, pronounced itself on the issue of the plaintiff's standing to institute the proceedings herein in the following terms:

“Accordingly, I find that the applicant lacks the necessary locus standi to bring this matter before the Court. She is neither a director nor a shareholder in her own right, nor in her capacity as the administrator of the estate of the late Joseph Kangari Muhu. Consequently, without proper standing, the reliefs sought in the application cannot be granted. The application dated 18th June 2024 is therefore struck out, with no orders as to costs.”

- 2.** Following that determination, the plaintiff has now filed an application dated 2nd June 2025 seeking a review of the said Ruling. The application is opposed through Grounds of Opposition dated 27th September 2025. At the time of writing this Ruling,

no written submissions had been filed by either party. Nevertheless, in the interests of finality and judicial economy, I consider it prudent to determine the matter on the basis of the pleadings on record.

Analysis and Determination

3. The singular issue for determination is whether the plaintiff has satisfied the threshold for review as stipulated under **Section 80 of the Civil Procedure Act** and **Order 45 Rule 1 of the Civil Procedure Rules**. These provisions, which are in *pari materia*, circumscribe the Court's jurisdiction to review its own decisions to three limited grounds:
 - a) *Discovery of new and important matter or evidence which, despite the exercise of due diligence, was not within the applicant's knowledge or could not be produced at the time of the original decision;*
 - b) *Error apparent on the face of the record;*
 - c) *Any other sufficient reason.*
4. The applicant has not identified which of these statutory grounds she relies upon. Instead, she

reiterates her earlier position and essentially expresses dissatisfaction with the Court's determination. Having pronounced itself on the matter, this Court is now functus officio. The applicant's recourse, if aggrieved, lies in an appeal rather than in a review.

5. The jurisprudence is clear. In **Mary Wambui Njuguna V William Ole Nabala & 9 Others, [2018] eKLR**, the Court of Appeal, citing Chittaley & Rao in 'The Code of Civil Procedure (4th Edn, Vol. 3)' p. 3227), emphasized that:

“A point which may be a good ground of appeal may not be a ground for an application for review. Thus, an erroneous view of evidence or of law is no ground for a review though it may be a good ground for an appeal.”

6. Similarly, in **Republic V Public Procurement Administrative Review Board & 2 Others, [2018] eKLR**, the Court endorsed the holding in

National Bank of Kenya Ltd V Ndungu Njau,
[1996] KLR 469, where it was stated that:

“An order cannot be reviewed because it is shown that the judge decided the matter on a foundation of incorrect procedure and or that his decision revealed a misapprehension of the law, or that he exercised his discretion wrongly... The proper way to correct a judge’s alleged misapprehension of the procedure or the substantive law or his alleged wrongful exercise of discretion is to appeal the decision unless the error be apparent on the face of the record and therefore requires no elaborate argument to expose.”

7. The import of these authorities is that dissatisfaction with a judge’s interpretation of the law or evaluation of evidence is not a ground for review. Such grievances must be pursued through the appellate process. The applicant herein has not

demonstrated discovery of new evidence, an error apparent on the face of the record, or any other sufficient reason to warrant review. In the premises, I find no merit in the application dated 2nd June 2025.

The Application dated 27th November 2024

- 8.** The application dated 27th November 2024 filed by the defendants seeks to have this suit struck out on account of the Ruling of 8th November 2024. The application is supported by the affidavit of SERAH MWERU MUHU, the 1st defendant, sworn on even date, reiterating this Court's finding that the plaintiff was neither a director nor a shareholder of the 2nd defendant company and therefore could not maintain a suit purporting to assert any rights over the 2nd defendant's shares.
- 9.** The application is opposed by way of a Replying Affidavit sworn by the plaintiff on 2nd May 2025. The plaintiff contends that the Ruling of 8th November 2024 did not expressly hold that she lacked locus standi, but rather that she was not the administrator of her late husband's estate. She takes issue with this Court for having failed to

consider the facts of the dispute and therefore arriving at a decision that was unfair to her. She restates her case and urges that in the interests of justice, every litigant ought to be accorded a fair hearing. In support of her position, she relies on the decision in **Mutiso V Patel, [2022] KEHC 11783 (KLR)**, maintaining that she has standing to prosecute this matter.

- 10.** The power to strike out pleadings is conferred under ***Order 2 Rule 15(1) of the Civil Procedure Rules***. The rationale behind this provision is to prevent the Court from expending time and resources on proceedings that are fundamentally defective and incapable of sustaining a cause of action. I say this mindful of the settled jurisprudence that striking out pleadings is a draconian remedy, to be exercised sparingly and only in the clearest of cases. (See: **Yaya Towers Limited V Trade Bank Limited (In Liquidation), CA No. 35 of 2000** and **DT Dobie & Company (K) Ltd V Muchina, [1982] KLR 1**).

11. The plaintiff filed this suit seeking to litigate matters relating to the governance and management of the 2nd defendant company. Her grievances concern the appointment of directors, the alleged failure to convene annual general meetings, and non-payment of dividends. These are matters that, by their very nature, can only be pursued by a person clothed with the rights of a shareholder or director.

12. I have, within this context, revisited the decision of 8th November 2024 where this Court stated as follows:

“For the applicant to establish her locus standi in bringing this suit, it must be shown that the Company’s articles of association recognize the transfer of shares upon a shareholder’s death and allow the personal representative to assume the rights attached to those shares. Against this background, I have carefully reviewed the evidence presented by both parties... Accordingly, I

find that the applicant lacks the necessary locus standi to bring this matter before the Court. She is neither a director nor a shareholder in her own right, nor in her capacity as the administrator of the estate of the late Joseph Kangari Muhu. Consequently, without proper standing, the reliefs sought in the application cannot be granted.”

- 13.** The Court’s determination was unequivocal that the plaintiff lacked standing both in her personal capacity and in any representative capacity as the alleged administrator of her late husband’s estate. This defect is not a mere procedural irregularity that can be cured by amendment or indulgence of the Court. Rather, it strikes at the very foundation of the suit. Locus standi is the legal gateway through which a party invokes the jurisdiction of the Court. Without it, the Court cannot be called upon to adjudicate matters that are otherwise

reserved for persons clothed with the requisite legal authority.

- 14.** To permit the suit to proceed in such circumstances would amount to allowing proceedings that are incurably defective and incapable of yielding any enforceable or lawful relief. I am therefore constrained to conclude that the suit is unmaintainable ab initio.

Disposition

15. Accordingly,

- i. The application dated 2nd June 2025, is dismissed.***
- ii. The application dated 27th November 2024 is allowed with the consequence that this suit is hereby struck out in its entirety.***
- iii. Given the circumstances of the case and the relationship of the parties, I deem it just and equitable to make no order as to costs.***

**DATED, SIGNED AND DELIVERED IN NAIROBI
THIS 23RD DAY OF MARCH 2026.**

F. MUGAMBI

JUDGE

Delivered in presence of:

Ms Nafula for the plaintiff

Ms Chepngeno for the defendant/ applicant

Mr Mwiti for the IPs

Court Assistant: Lillian

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