

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
MILIMANI
ELCA NO. E228 OF 2024

MOSES GAKUNYA KUNGU	- 1ST
TENANT/APPLICANT	
DANCHEM PHARMACY LIMITED	-2ND
TENANT/APPLICANT	
CHARLES MBUGUA THUO	-3RD TENANT/APPLICANT
GICHANINE ELECTRICALS	-4TH
TENANT/APPLICANT	
MARTHA MUTHONI GITUKU	-5TH TENANT
/APPLICANT	

VS

DAJOHN ENTERPRISES LTD	- LANDLORD/
RESPONDENT	

RULING

[in respect to the Applicant's application dated 30/10/25]

1. The application is brought under Order 45 Rule 1 and 2 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act and all other enabling provisions of the law.
2. Vide the application dated 30/10/2025 the applicants sought for orders as follows;
 - a. That this court do review the order giving the tenants to vacate the premises within 90 days from 29/9/25 to two years.

- b. That there be a stay of execution of the orders made on 29/9/25 pending the hearing and determination of the application
- c. Costs of the application will be in the cause.
3. The application is premised on the grounds annexed thereto and the supporting affidavit of Charles Mbugua Thuo , the 3rd applicant herein, who swore on his own behalf and that of the rest of the applicants.
4. He deponed that the period of 90 days is too short and inadequate for the tenants to vacate, as they have significant investments in the suit premises and require more time to relocate their businesses. He stated that it is only fair and in the interest of justice that the tenants be given a period of two years to prepare and vacate the premises. He also asserted that the Landlord shall not suffer any loss, as the tenant shall continue to pay the prescribed rent when due or within such a reasonable time as this court may deem fit, after considering all relevant factors.
5. The application is opposed by the Respondent through the Replying Affidavit sworn on 6/3/2025 by Jackline Nyambura Mbugua, who stated that she is the Chief Operations Officer of the Respondent and is duly authorised to swear the said affidavit.
6. She informed the court that some tenants have vacated the premises as ordered by the court. That the prayers sought are intended to alter the judgment of the court delivered on 29/9/25. The court is now functus officio,

having delivered its judgment on the material day, and cannot be asked to sit on appeal against its own orders. In any event, it has been over two years since 1/9/2023, when the Landlord asked the applicants to vacate the premises, and their continued stay is causing the Landlord a loss due to the unused space in the building resulting from disrepair.

7. She added that the application is meant to delay the implementation of the judgement and yet the Public Health department is threatening to condemn the entire building as a public health hazard. That there is nothing unique about the applicants' businesses, since they are just ordinary shops that could be cleared in a day if the tenants wanted to. That there is no new matter discovered by the applicants that could not have been presented to the court at the hearing, and urged the court to dismiss the application with costs.
8. Counsel for the applicants submitted that the applicants are seasoned commercial tenants who have anchored their livelihoods and business operations in the premises for over a decade and a half. The applicants are appealing to the court's inherent jurisdiction to exercise its discretion and grant an extension of time based on principles of equity, fairness, and the practical realities of commercial relocation. The 90-day period to vacate the premises failed to consider the substantive investments and the logistical impossibility of relocating complex business infrastructure. They further argued that good

will and employee stability would be disrupted if the business were moved abruptly.

9. Furthermore, finding a comparable commercial zone within a short timeframe is impractical. There is no prejudice if the period is extended, as the tenants are paying rent, and therefore, there is no financial loss to the Landlord. The 90-day window for a 15-year-old business is both physically and administratively unfeasible, and a period of two years would be a reasonable middle ground. This would respect the respondents' right to their property while allowing the applicants to vacate and continue their businesses.
10. Counsel for the respondent stated that the cumulative period during which the notice to terminate has been indirectly extended is approximately three years over the duration of the suit in the tribunal and the appeal in this court. The landlord is at risk of prosecution for operating an uninhabitable premise, thereby violating the Public Health Act. There is really nothing new before the court to justify a review of its orders. There is no suggestion of any mistake or error on the face of the record nor any review for sufficient reasons.
11. Furthermore, it was submitted that the applicants' complaint pertains to the 90-day period, and they would have preferred a 24-month period; therefore, it cannot be regarded as a manifest error on the record but rather as a difference in opinion or perspective. It was argued that the court cannot be expected to change its view simply

because the appellant finds the period inadequate. Counsel highlighted that, to the extent the court based its ruling on the 90-day period, it is now functus officio.

12. The key issue for determination is whether the applicants are entitled to a review of the judgment and to extend the time granted to vacate the premises from 90 days to two years.

13. The substantive powers for review of a judgement or an order made by a court are provided for under Section 80 of the Civil Procedure Act which states ;

“Any person who considers himself aggrieved— (a) by a decree or order from which
(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. Rules Committee. 39 of 1956, s. 5, 14 of 1977, Sch. 13 of 1978, Sch. 10 of 1997, 6 of 2009, Sch. part x—r

14. While Order 45 Rule 1 of the Civil Procedure Rules 2010 provides the procedural requirements, Section 80 of the Civil Procedure Act , the substantive law provides that: -

“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.”
15. In this case, the court determined the instant appeal vide its judgment rendered on 29/9/25 in the following terms;
- a. The upshot is that this appeal is partially allowed.
 - b. The Judgment of the Tribunal delivered on 13/12/2024 be and is hereby modified to allow the Appellants 90 days within which to vacate the premises.
 - c. Failure to do so shall entitle the Respondent to evict them.
 - d. Each party shall bear their own costs of the appeal and those of the Tribunal.
16. It is the applicant's case that the 90 days given in the above judgment are not reasonable/ sufficient to allow them to relocate their businesses.
17. The review anticipated by the provisions of Order 45 Rule 1 covers the discovery of new and important matter or evidence which, after 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 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. He may apply for a review of the judgment.

18. In the current application, it is clear that the applicants are dissatisfied because they were given only 90 days to vacate the premises instead of 2 years. In my opinion, these are not sufficient grounds to review the judgment, but perhaps they could appeal.

19. Consequently, I find that the application is unmerited. It is dismissed with costs in favour of the respondent.

20. Orders accordingly

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 10TH DAY OF APRIL 2026 VIA MICROSOFT TEAMS.

**J G KEMEI
JUDGE**

Delivered online in the presence of:

1. Ms Mburugwa HB for Mr Kinyua for the Appellants
2. Mr Njuguna for the Respondents
3. C/A - Mr Duncan Muusya