



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC LAND PETITION NO. E007 OF 2023

PAUL ONYERA & 8 OTHERS

(Suing on their own behalf and on behalf of the residents and

homeowners of the GREENPARK ESTATE)

PETITIONERS

-VERSUS-

SUPERIOR HOMES KENYA LTD.....1ST

RESPONDENT

ENERGY AND PETROLEUM REGULATORY

AUTHORITY.....2ND

RESPONDENT

MACHAKOS COUNTY GOVERNMENT.....3RD

RESPONDENT

NATIONAL ENVIRONMENTAL MANAGEMENT

AUTHORITY.....4TH

RESPONDENT

AND

**GREENPARK ESTATE MANAGEMENT
(GEMS) LIMITED.....INTERESTED
PARTY**

RULING

1. This ruling is in respect of the notice of motion dated 1 October 2025, filed by the petitioners. It is presented as being made under **Articles 50 (1)** and **159 (2) (d)** of the **Constitution**, **Sections 1A, 1B, 3A** of the **Civil Procedure Act**, **Order 45 Rules 1 and 2**, **Order 12 Rule 7**, **Order 51 Rule 1** of the **Civil Procedure Rules 2010**, and any other enabling laws. They seek the following reliefs from this court: -

a) The Honourable Court be pleased to review its order dated 11 June 2025, striking out the petition against the 3rd respondent and the 1st interested party.

b) The Honourable Court be pleased to reinstate the suit against the 3rd respondent and the 1st interested Party.

c) The costs of this application be borne by the 3rd respondent and the 1st Interested Party.

2. The motion is supported by the grounds set out in the body thereof and the supporting affidavit of the 1st petitioner, sworn

on the instant date. In brief, he states that the court mistakenly struck out the 3rd respondent and the 1st interested party from the suit for the alleged failure of the petitioners to serve them with the petition and court orders. However, the petitioners had properly served all parties, as shown by two affidavits.

3. The court only considered one affidavit and overlooked the other, leading to an error apparent on the record. Reinstating the suit would not prejudice any party. He stated that the delay in filing the motion was due to the time required to obtain the court orders. In support of his assertions, he presented two returns of service deposed on 8 and 24 April 2025.
4. In response to the motion, the 1st respondent, via the affidavit of Shiv Arora, sworn on 6 November 2025, concisely states that the motion is filed more than 110 days after the order was issued, constituting unreasonable delay and contravening **Order 45 Rule I (1)** of the **Civil Procedure Rules, 2010**. The petitioners have not provided a copy of the order or identified any specific mistake or error on the record to support their motion. There is no clear mistake or error in the court's record of the order that would justify a review. Instead of correcting an obvious error, the motion seeks to set aside the order, which should be addressed through an appeal, not a review.

5. Upon court directions, the motion was argued through a written submission filed by **M/s. Coulson Harney LLP**, Advocates for the 1st respondent, dated 29 January 2026. Unfortunately, the petitioners' counsel did not file their submissions. Accordingly, after thoroughly examining the motion, including its grounds and affidavits by parties, together with the 1st respondent's arguments and the provisions of law and judicial precedents relied upon, which shall be taken into consideration in the analysis and determination of this matter, the sole issue for determination is **whether the motion meets the legal threshold for review of the orders issued in the impugned ruling.**

6. We shall now proceed. the **Constitution of Kenya (Protection and Fundamental Freedoms) Practice and Procedure Rules, 2013 ("Mutunga Rules")**, do not explicitly prescribe procedures for such review; however, guidance may be derived from **Rules 3(6) and 3(8)** thereof, which impose duties upon counsel and litigants, and confer jurisdiction upon the trial court to strike out a petition where it is deemed an abuse of the court process. These provisions state:-

Rule 3(6)

***“A party to proceedings commenced under these Rules, or an advocate for such party is under a duty to assist the Court to further the overriding objective of these rules and in that regard to—
(a) participate in the processes of the Court; and
(b) comply with the directions and orders of the Court.”***

Rule 8

“Nothing in these rules shall limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”

7. Because of this lacuna, the petitioners have moved this court within the provisions of the **Civil Procedure Rules**. With respect to this issue, the relevant provisions governing the review of court decisions are set out in **Section 80** of the **Civil Procedure Act** and **Order 45, Rule 1** of the **Civil Procedure Rules**. **Section 80** states 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.”

8. Further, **Order 45 Rule 1 (1)** of the **Civil Procedure Rules** 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.”

9. In line with established jurisprudence, higher courts have interpreted the aforementioned provisions in this way: **In Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] KEHC 6379 (KLR)**, the court summarised the following non-exhaustive principles:

“30. The principles which can be culled out from the above-noted authorities are: -

i. A court can review its decision on either of the grounds enumerated in Order 45 Rule 1 and not otherwise.

ii. The expression "any other sufficient reason" appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds.

iii. An error which is not self-evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of record justifying exercise of power under Section 80.

iv. An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

v. A decision/order cannot be reviewed under Section 80 on the basis of subsequent

decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.

vi. While considering an application for review, the court must confine its adjudication with reference to material, which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

vii. Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.

viii. A mistake or an error apparent on the face of the record means a mistake or an error, which is prima-facie visible and does not require any detail examination. In the present case the petitioner has not been able to point out any error apparent on the face of the record.

ix. Section 80 of the Civil Procedure Code provides for a substantive power of review by a civil court and consequently by the appellate courts. The words occurring in Section 80 mean

subject to such conditions and limitations as may be prescribed thereof and for the said purpose, the procedural conditions contained in Order 45 Rule 1 must be taken into consideration. Section 80 of the Civil Procedure Code does not prescribe any limitation on the power of the court, but such limitations have been provided for in Order 45 Rule 1.

x. The power of a civil court to review its judgment/decision is traceable in Section 80 CPC. The grounds on which review can be sought are enumerated in Order 45 Rule 1.”

10. Further, in the decision of the **Court of Appeal in Civil Appeal No. 2111 of 1996, National Bank of Kenya -vs- Ndungu Njau**, which has been cited in a line of court decisions, the court stated as follows on review applications:

“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 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.”

11. In this instance, and pursuant to the applicable law and principles, the petitioners have emphasised that the basis for review is that this court committed an error on the face of the record in not considering the return of service dated 8 April 2025 and filed on 24 April 2025. Contrary to the 1st respondent’s submissions, this court finds that this ground for review is deemed permissible, as it is self-evident and does not require elaborate reasoning to substantiate. Essentially, it constitutes an error apparent on the face of the record.
12. Additionally, the 1st respondent contends that the failure to attach the order to the constitutes a procedural defect, as the motion was filed without it. The respondent further relies on the persuasive decision in **Suleiman Murunga v Nilestar Holdings Limited & another [2015] KEELC 264 (KLR)**. However, this decision was duly considered by the Court of Appeal in the case of **Peter Kirika Githaiga & another v Betty Rashid [2016] KECA 100 (KLR)**, wherein various conflicting decisions of the superior court concerning this issue, including **Suleiman Murunga (Supra)**, were examined, and the appellate court settled this issue thus:

“An order emanates from a ruling whereas a judgment gives rise to a decree and should ordinarily be extracted. As already stated Order

45 (1) does not expressly provide that an order or decree must be annexed to the application for review. The rule only provides that where a party is aggrieved by an order or decree, he may apply for review. Our understanding is then that, where a formal order or decree has not been extracted or attached to the application for review but a party is able to direct the court's attention to that part of the ruling or judgment which he complains of, since such decision would be on the court file anyway, the application for review cannot be rendered fatally defective."

13. This court concurs with the binding decision. Furthermore, as a court of record, the impugned order is readily accessible, and no prejudice will be caused to the 1st respondent by reference to it. The 1st respondent was present at the time the order was made, and its arguments in this regard are contrary to the principles of the overriding objectives as outlined in **Sections 1A** and **1B** of the **Civil Procedure Act**. This argument does not stand.
14. The 1st respondent also raises the issue of delay, grounded in **Order 45, Rule 1** of the **Civil Procedure Rules**. This provision requires that an application for review be filed with the court that issued the decree or made the order without unreasonable delay. This provision has been the subject of

rendition by our courts, including the decisions of **Jameny Mudaki Asava v Brown Otengo Asava & another [2015] KECA 313 (KLR)** and **Origo & another v Mungala [2005] KECA 356 (KLR)**, which were cited by the 1st respondent and affirm the legal principle that applications for review should be instituted without undue delay.

15. This court associates itself with these binding decisions and concurs with the 1st respondent that the petitioners filed the motion with undue delay, as the impugned decision was rendered on 11 June 2025, when **Mr. Agwara**, for the petitioners, was present. On that date, counsel did not address the affidavit of service of 8 June 2025 or even direct the court to it. Instead, the petitioners went to sleep and filed the instant motion on 2 October 2025, just as a mention date to set a hearing date was being scheduled. In this court's humble opinion, their actions are suspicious. The petitioners' argument that the delay was caused by the failure to obtain the court order issued on 11 June 2025 is nothing but deceptive and misleading, intended to obtain a favourable outcome, as the court record shows they never applied to have this order extracted.

16. This court has earlier found that there was an error on the face of the record for failing to consider the affidavit of service of 8 April 2025. However, even assuming there was no delay, which, for clarity, was indeed present, this court, in considering

this return of service, will reach a similar conclusion as the orders issued in the impugned orders.

17. The order directing service on the 3rd respondent and the interested party was issued on 25 March 2025, which is in accordance with **Rule 14 (1)** of the **Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013**. Meanwhile, the affidavit states that one of the dates the process server purportedly served was on 17 November 2023, which is well before the court's directions. Additionally, the process server claims to have served these parties on 4 April 2025 and 8 April 2025 via email; nonetheless, this return of service has not been supplemented with supporting documents to substantiate that the parties were indeed served as deposed. In essence, the 3rd respondent and interested party were not served as found in the impugned orders.
18. In the end, for the reasons and findings set out above, this court finds that the notice of motion dated 1 October 2025 is not merited. It is dismissed, with costs being in the cause. A hearing date will be issued.

Orders accordingly.

Delivered and Dated at Machakos this 21st day of April, 2026.

**HON. A. Y. KOROSS
JUDGE
21.04.2026**

**Ruling delivered virtually through Microsoft Teams Video
Conferencing Platform**

In the presence of;

Ms. Kanja Court Assistant

Mr. Charles Oyeng for Cecily Kuyo for 1st respondent.

Mr. Odhiambo Isaac for 2nd respondent.

Mr. Agwara for applicant/petitioner.