



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT MALINDI

ELC NO. E115 OF 2024

GREEN HOLIDAY CONDOS.....
.....PLAINTIFF

VERSUS

MARK PETER LAWLER.....1ST
DEFENDANT

ELIZA JEBET LAWLER.....2ND
DEFENDANT

DISTRICT LAND REGISTRAR, MOMBASA.....3RD
DEFENDANT

RULING

1. Two applications are currently pending before this court for decision. The first application, dated July 22, 2025, seeks review of this court's orders dated June 26, 2025; the second application, dated September 17, 2025, is for contempt

allegedly arising from disobedience of this court's orders dated June 26, 2025, aforesaid.

- 2.** The court instructed that the motions be heard concurrently, and the learned counsel for the parties was directed to submit written arguments. They complied and provided this court with the relevant provisions of applicable law and judicial precedents concerning the two motions. The court expresses its gratitude and appreciation for their cooperation in this matter.
- 3.** Arising from the materials and submissions presented before me, the issues requiring the court's determination are whether it is fitting to issue a review of this court's decision dated 26th June 2025, and whether to punish for contempt arising from the alleged disobedience of those orders, and who should bear the costs of the two motions.
- 4.** On June 26, 2025, after thoroughly examining the three pending motions before it, sending the Deputy Registrar of this Court to the suit premises, and considering who was in occupation of the suit premises, this Court ruled *inter alia* that:

“We are presented with two conflicting interests: that of the plaintiff, who asserts entitlement to the ownership of the suit property, claiming it has been fraudulently transferred to the 1st and 2nd defendants by the intended interested party. It is important to note that the 1st and 2nd defendants are currently in occupation; therefore, an injunction cannot be issued against them, as this would necessitate an interlocutory mandatory injunction, which is deemed inappropriate at this juncture.

It is therefore appropriate for the court to issue preservation orders now to protect the foundation of the property during the investigation of the parties' titles, which will happen during the main suit hearing. Accordingly, the court shall issue status quo orders, as outlined in the final orders below.....

Consequently, the final orders of this court will be as follows concerning the three motions:

i) Notice of Motion dated 11th November 2024 allowed to the extent that:

(a) Status quo orders in respect to the suit property to be maintained. That is the suit

property to remain intact—no further dealing, transfer, or charging of the same till this matter is heard and determined.

(b) The 1st, 2nd, and 3rd Defendants are hereby restrained from interfering with the survey records regarding the suit property described as CR. No. 46305, Land Survey Plan No. 299522, Kilifi, and assigned LR. 17835/6 (Original No. 17835 Kilifi) and making further entries on LR No. 17835/6 until this suit is heard and determined.

(c) That pursuant to the visit by the Deputy Registrar of this court, the 1st and 2nd defendants are to remain in possession till this matter is heard and determined.

(d) That there shall be no further construction on the suit property till this matter is heard and determined.

ii) Notice of Motion dated 29th November seeking a stay of proceedings of ELC No. 49 of 2022 is dismissed. The 1st and

2nd Defendants are not parties to those proceedings.

iii) Notice of Motion dated 2nd December 2024, seeking the joinder of one Antorio De Gregorio, is dismissed as he has no stake or interest in the suit property herein, having ostensibly transferred the title to the 1st and 2nd Defendants. His claim in ELC No. 49/2022 still stands. The suit is still active.

iv) Costs in the cause.”

5. The motion dated July 22, 2025, was brought by 1st and 2nd defendants on the ground that, with the *status quo* orders issued by this court and given the ongoing construction, the court was moved that, due to the adverse coastal heat, the applicant be allowed to carry out minimal construction to forestall any damages to the integrity of the building as the matter progresses.

6. Conversely, the application filed on September 17, 2025, by the plaintiff requests that the Court impose sanctions for contempt upon the 1st and 2nd defendants. It is contended

that the 1st and 2nd defendants have, since the Court's previous directives, demonstrated contempt by continuing to construct and add structures on the subject property, despite a clear Court order issued on June 26, 2025. Furthermore, it is emphasized that the Court has neither reviewed nor rendered a decision on their application dated July 22, 2025, which sought, among other reliefs, a partial continuation of construction activities and was also intended to delay the proceedings in this matter.

7. In the application for review, the plaintiff contends that the 1st and 2nd defendants, without color of right, have no title or legal right to occupy or possess the suit property herein and are trespassing on it. The plaintiff, in its claim herein, has demonstrated the actual prejudice it suffers from the 1st and 2nd defendants herein, who allegedly have any iota of possession of the suit property. The plaintiff has demonstrated that the 1st and 2nd defendants are in possession of a bad title tainted by illegality arising from fraud, and that the title remains null and void ab initio. In the circumstances, the ruling issued by this Court on 26th June

2025 should stand, and the Court should proceed to punish for contempt.

- 8.** The 1st and 2nd defendants, in a rejoinder, assert that, in obedience to the subsisting orders, they have approached the Court to be allowed to continue partially with the ongoing construction as the matter progresses in Court. It is as a result of their obedience to the subject orders that they approached this Court for review.
- 9.** Given the nature of the two applications, I believe the initial application for review is being challenged by the second, the application for contempt. As submitted by the parties and supported by relevant judicial authorities under Kenyan law, specifically Section 80 of the Civil Procedure Act (Cap 21) and Order 45 Rule 1 of the Civil Procedure Rules, an application for review must satisfy specific conditions precedent to be entertained. For a court to exercise its discretion to review a decree or order, the applicant must first demonstrate that they are an "*aggrieved person*" and meet one of the following criteria: there is no pending appeal, or an appeal is permitted by law but has not yet

been filed by the applicant. If an appeal has already been lodged, a party is generally barred from seeking review concurrently. The decree or order is one from which the applicable law permits no appeal. The application must be filed promptly, as emphasized in **Guardian Coach Limited v Terer & 2 others (Civil Appeal E044 of 2022) [2025] KEHC 4150 (KLR) (1 April 2025) (Ruling)**, which holds that any undue, unexplained delay constitutes grounds for dismissal.

- 10.** Once the preliminary conditions are met, the Court grants review if the applicant demonstrates one of the following grounds: new and important evidence has been discovered, or evidence that could not have been produced earlier despite reasonable diligence. Error apparent on the record: an error that is self-evident and does not require extensive argument or legal debate. Other sufficient reason: a residual ground for correcting injustices, see **Swai v Kenya Breweries Limited [2014] KECA 883 (KLR)**, as an exercise of judicial discretion aimed at preventing a miscarriage of justice:

“As repeatedly pointed out in various decisions of this Court, the words, “for any sufficient reason” must be viewed in the context firstly of Section 80 of the Civil Procedure Act, Cap 21, which confers an unfettered right to apply for review and secondly on the current jurisprudential thinking that the words need not be analogous with the other grounds specified in the order. In Sarder Mohamed v. Charan Singh Nand Sing and Another (1959) EA 793, the High Court correctly held that Section 80 of the Civil Procedure Act conferred an unfettered discretion in the Court to make such order as it thinks fit on review and that the omission of any qualifying words in the Section was deliberate. In Shanzu Investments Limited v. Commissioner for Lands (Civil Appeal No. 100 of 1993) this Court with respect, correctly invoked and applied its earlier decision in Wangechi Kimata & Another Vs. Charan Singh (C.A. No. 80 of 1985) (unreported) wherein this Court held that:

“any other sufficient reason need not be analogous with the other grounds set out in the rule because such restriction would be a

clog on the unfettered right given to the Court by Section 80 of the Civil Procedure Act; and that the other grounds set out in the rule did not in themselves form a genus or class of things which the third general head could be said to be analogous.”

11. After a comprehensive review of the application, no concerns have been identified that would justify reconsideration of the orders issued on June 26, 2025. The applicants are simply requesting that this Court *revise*, rather than *review*, its previous orders to accommodate the progress made by the 1st and 2nd defendants in their construction activities on the suit premises, rather than on genuine, known traditional grounds for review as set out in the authorities I have cited. Issuing such orders would imply an anticipation of a favorable outcome for the 1st and 2nd defendants in this case. What measures would be available if their titles were established to be acquired through fraudulent means? How could they recover their investments

if construction proceeds and the building is subsequently ordered to be demolished?

12. In my opinion, the current situation does not warrant review under Section 80 of the Civil Procedure Act and under Order 45, Rule 1 of the Civil Procedure Rules. The application dated July 22nd, 2025, is hereby dismissed.

13. Turning to the 2nd application for contempt, it will be noted that this application was brought well after the 1st and 2nd defendants had applied for review. It is a direct counter to the application for review.

14. To establish contempt of court in Kenya, an applicant must prove beyond a reasonable doubt that a valid court order existed, that the respondent was aware of it, and that the respondent intentionally or deliberately disobeyed or failed to comply with it. This generally requires showing that the act was not merely negligent but a conscious defiance of judicial authority. See **Republic v Nairobi City County Government & 5 others; KTK Advocates (Ex parte Applicant) [2024] KEHC 15342 (KLR)**.

15. The 1st and 2nd defendants argue that it was not possible for them to proceed with construction and approach the Court at the same time for review to sanitize what they had done, and that the pictures they presented show that the construction site was in bad shape due to the coastal weather.

16. From the materials presented by the plaintiff, I do not see any new evidence demonstrating further construction contrary to the orders issued on June 26, 2025. Thus, the application dated September 17, 2025, is hereby dismissed.

17. In light of the Court's findings dismissing the two applications by the rival parties, each party will bear its own costs.

18. Given the nature of this matter, the parties argue to fast-track the hearing.

Dated, signed, and delivered virtually in Nyeri on this 9th day of April 2026.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Kamau for the Plaintiff

Mr. Odwour for the 1st & 2nd Defendants

Kendi: Court Assistant