Mburu v Gacheru & 4 others (Environment and Land Case 98 of 2023) [2026] KEELC 2614 (KLR) (29 April 2026) (Ruling)

Neutral citation: [2026] KEELC 2614 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA

ENVIRONMENT AND LAND CASE 98 OF 2023

JM KAMAU, J

APRIL 29, 2026

BETWEEN

NAOMI WAMBUI MBURU ..... PLAINTIFF

AND

GRACE NJOKI GACHERU & 4 OTHERS ..... DEFENDANT

RULING

1. Before me is an Application dated 25/11/2025 for an order of stay of execution of the orders issued on 21/8/2024 and 11/11/2024 respectively and an order directing the Land Control Board Nyandarua to provide all details pertaining the said transaction and registration of parcel No. Nyandarua/ Tulusha/444. There is also a further prayer for the reviewing of the orders of 21/8/2024 and have the matter start afresh and that the Applicant be allowed to file a Plaint. The Applicant avers that she never instructed her Advocates to institute the suit in Nyahururu.

2. In the Replying Affidavit of Grace Njoki Kimani, 1st Respondent sworn on 26/1/2026, the holder of a Grant Ad Litem in respect to the Estate of the late Mwangi Macharia alias Ayub Kimani Mwangi she urges that the Application dated 25/11/2025 is incompetent and bad in law, a gross abuse of the Court process, brought in bad faith, unmeritorious and the same militates against the very provisions of the law its anchored on. Judgment was delivered on 25/7/2024 and execution ensued where Nyandarua/ Tulusha/444 was registered in the name of the Defendant. She depones that the Application offends the directions of functus officio, res judicata and a gross abuse of the Court process. The Applicant has not met the threshold of review and that granting the orders sought in the current Application would undermine the doctrine of finality of litigation and erode public confidence in the administration of justice.

3. The Plaintiff in her further Affidavit repeats the contents of the earlier Affidavit in support of her Application.

4. I have gone through the Application and I am of the view that this is an omnibus Application with multiples of prayers. But the main issue sought is Review of the Orders of 21/8/2024. However, the threshold of Review has not been met.

5. In an Application for Review, Section 80 of the *Civil Procedure Act* Cap 21 provides 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."

6. Order 45 Rule 1 of the Civil Procedure Rules, 2010 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."

7. In Republic v Public Procurement Administrative Review Board & 2 others [2018] eKLR it was held: -

   " Section 80 gives the power of review and Order 45 sets out the rules. The rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review limiting it to the following grounds; (a) discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or; (b) on account of some mistake or error apparent on the face of the record, or (c) for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without unreasonable delay."

8. In Pancras T. Swai v Kenya Breweries Limited [2014] eKLR the Court of Appeal held:-

   " Order 44 rule 1 (now Order 45 rule 1 in the 2010 Civil Procedure Rules) gave the trial Court discretionary power to allow review on the three limps therein stated or "for any sufficient reason....."

9. In Sarder Mohamed v. Charan Singh Nand Sing and Another (1959) EA 793 the High Court 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.

10. Discussing the scope of Review, the Supreme Court of India in the case of Ajit Kumar Rath v State of Orisa & Others, 9 Supreme Court Cases 596 at Page 608. had this to say:-

> "the power can be exercised on the application of a person on 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 order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for stabling it. It may be pointed out that the expression "any other sufficient reason" ..... means a reason sufficiently analogous to those specified in the rule"

11. In Tokesi Mambili and others v Simion Litsanga the Court held as follows:-

    i. In order to obtain a review an applicant has to show to the satisfaction of the court that there has been discovery of new and important matter or evidence which was not within his knowledge or could not be produced at the time when the order to be reviewed was made. An applicant may have to show that there was a mistake or error apparent on the face of the record or for any other sufficient reason.

    ii. Where the application is based on sufficient reason it is for the Court to exercise its discretion.

12. In Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] eKLR High Court of Kenya Nairobi Judicial Review Division Misc. Application No. 317 of 2018 John M. Mativo Judge culled out the following principles from a number of authorities: -

    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.

13. The case here is that of negligence and not one of discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the Plaintiff's knowledge.

14. The Application could also not pass the Test of:

> " .....or for any other sufficient reason....."
>
> which reasons leading authorities hold must be analogous to the other grounds mentioned under the Act and Rules, a reason sufficiently analogous to those specified in the Rule"

15. In the case of Evan Bwire v Andrew Aginda Civil Appeal No. 147 of 2006 cited fin the case of Stephen Githua Kimani v Nancy Wanjira Waruingi T/A Providence Auctioneers (2016) eKLR the Court of Appeal held as follows:

> " An application for review will only be allowed on strong grounds particularly if its effect will amount to re-opening the application or case afresh. In other words, I find no material before me to demonstrate that the applicant has demonstrated the existence of new evidence which he could not get even after exercising due diligence."

16. The current Application falls under the above category. The effect of allowing it would amount to re-opening the case afresh. Litigation must come to an end. Parties must present all the facts, documents and evidence in Court at the appropriate time before the Court retires to write its Judgment. Time and time again Courts have advised litigants that they are bound by their pleadings and that you do not prosecute your case piecemeal. What is demonstrated by the Application is a case of poor pleading when bringing the case to Court which is not what was envisaged by Section 80 of the *Civil Procedure Act* nor the Rules under Order 45 of the Civil Procedure Rules.

17. Finally, the Application is irregularly in Court since an Applicant in an Application for Review ought to have annexed a formal extracted Decree or order in respect of which the review is sought.

18. In the case of Suleiman Murunga v Nilestar Holdings Limited & Another (2015) eKLR the court held as follows:

> " The plain reading of the above provision (referring to Order 45 Rule 1) is that an applicant for review ought to have annexed a formal extracted decree or order in respect of which the review is sought. In essence, judgment or ruling. Thus, where an applicant fails to annex the order sought to be reviewed, an application is defective. In the present application the order that the Defendants sought to be reviewed was not annexed with the result that the

> Defendant's application was fatally defective. I agree that a formal decree or order is a pre-requisite before an applicant can bring himself/herself within the ambit of order 45 of the Civil Procedure Rules as relates to review of the decree or order"

19. Save a copy of the Judgment, no such a Decree was attached to the present Application which makes the Application fatally defective.

20. A case which went through the entire motion of preparing pleadings, interrogatories, trial conference and Hearing such as in this one cannot be reviewed by the same Court which had adjudicated upon it. If that were to be allowed, it would set a very unsustainable precedence.

21. Having said so, the remaining duty is to dismiss the Applicant's Application dated 25/11/2025 with costs. A duty that I hereby discharge. The other prayers would also fall by the wayside.

RULING READ AND DELIvERED AT NYANDARUA THIS 29TH DAY OF APRIL 2026.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Samson.

Plaintiff's : In person.

Defendant's Counsel: Mr. Ndegwa.