



Mutuku & another v National Environment Tribunal & 2 others (Environment and Planning Appeal E005 of 2025) [2026] KEELC 2395 (KLR) (28 April 2026) (Judgment)

Neutral citation: [2026] KEELC 2395 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND PLANNING APPEAL E005 OF 2025**

NA MATHEKA, J

APRIL 28, 2026

BETWEEN

WINFRED MUTINDA MUTUKU 1ST APPELLANT

JAMES MUTUKU MUISYO 2ND APPELLANT

AND

THE NATIONAL ENVIRONMENT TRIBUNAL 1ST RESPONDENT

JETI GENERAL CONTRACTORS COMPANY LIMITED 2ND RESPONDENT

NATIONAL ENVIRONMENT MANAGEMENT 3RD RESPONDENT

JUDGMENT

1. The Appellant herein Winfred Mutinda Mutuku being dissatisfied with the entire Ruling of the Honourable members of the Tribunal delivered on 30th May 2025 in NET NO. E003 of 2024, Appeals against the Ruling and Order and sets forth the following grounds;
 1. That the learned members of the Tribunal erred in law and fact by finding that the 1st Appellant’s application to review was non meritorious and therefore dismissing the Application for review dated 24th March 2025.
 2. That the learned members of the Tribunal erred in law and fact by finding that there was no error apparent on the face of the record in the judgment delivered on the 11th March 2025.
 3. That the learned members of the Tribunal erred in law and fact by finding that the reference outlined in the 1stAppellant’s application for review were quotations from the record and therefore deliberate Judicial conclusion from the record.



4. That the learned members of the Tribunal erred in law and fact by finding that the 1st Appellant's application for review was an attempt by the Appellant/Applicant to reopen issues already determined and concluded that the issues raised were beyond the scope of review.
 5. That the learned members of the Tribunal erred in law and fact by ignoring to pronounce itself on the EIA license No. as prayed by the 2nd Respondent herein in its grounds of appeal and instead making a decision on a strange EIA license that was erroneously quoted by the NEMA who was the 1st Respondent in the National Environment Tribunal Appeal.
 6. That the learned members of the Tribunal erred in law and fact by ignoring to pronounce itself on the EIA license no. NEMA.EIA/PSL/11825 as prayed by the 2nd Respondent herein in its grounds of Appeal and instead making a decision on a strange EIA license No. NEMA/EIA/PSL/11828 that was erroneously quoted by the Nema who was the 1st Respondent in the National Environment Tribunal Appeal.
 7. That the learned members of the Tribunal erred in law and fact by maintaining that no error exists in the Judgment despite the 2nd Respondent, 1st and 2nd Appellant herein capturing the EIA License No. NEMA/EIA/PSL/11825 in their pleadings.
 8. That the learned members of the Tribunal erred in law and fact failing to rectify the names of the Director of the Appellant. The Tribunal in its Judgment referred to the Director as Kamali Musyoka Kithuva, however, the names of this Director is as per the CR12 which was also filed on record clearly shows that the Director's name is Kamali Musyoka Kithuva. Despite having a letter on record dated 4th June 2021 and referenced NMA/1004/20-D1, written and signed by Kamali Musyoka Kithuva, the tribunal points to administrative mistakes of Jeti General Contractors Limited as the justification for not allowing to rectify the said name in the Judgment.
 9. That the learned members of the Tribunal erred in law and fact by failing and maintaining that that the Authority discovered through investigations that Jeti General Contractors Limited carried its quarry activities on parcel Machakos/Nguluni/800/5621. When it was clear from the pleadings of the Authority and the 1st and 2nd Appellants herein that parcel number Machakos/Nguluni/800 was the host and situation of the site and this position was uncontroverted by Jeti General Contractors Limited itself.
 10. That the learned members of the Tribunal erred in law and fact while arriving at the final Ruling dated 30th May 2025 by disregarding the Appellants herein evidence and submissions while arriving at the Judgment.
 11. That the learned members of the Tribunal erred in law and in fact by dismissing all the Appellant's herein claim without considering its merits and in total disregard of the pleadings that actually provide the right EIA license in question together with the evidence of a copy of the license filed on record which also confirms that the EIA license in question is NEMA/EIA/PSL/11825 not NEMA/EIA/PSL/11828.
 12. That the learned members of the Tribunal erred in law and fact in failing to appreciate the 1st Appellants submissions and/or failing to give reasons for disregarding the pleadings and submissions which depicts glaring clerical errors thereof in the Judgment.
2. The Appellant prays for orders that;



- a. This Appeal be allowed.
 - b. The Ruling and Order of the Honourable National Environment Tribunal of Kenya at Nairobi in NET Case No. E003 of 2024 be set aside and the same be substituted by the decision of this Honourable Court.
 - c. The said Ruling and Order be substituted by a decision of this Honourable Court, rectifying the errors in the original Judgment of 11th March 2025.
 - d. Such other reliefs as may appear to this Honourable Court to be just.
3. This court has carefully considered the appeal and submissions therein. The appeal was unopposed. In the case of *Mwihoko Housing Company Limited vs Equity Building Society (2007) 2 KLR 171* is relevant. It was held, that;

A review could have been granted whenever the Court considered that it was necessary to correct an error or omission on its part. The error or omission must have been self-evident and should not have required an elaborate argument to be established. It would neither have been sufficient ground of review that another Court could have taken a different view of the matter nor could it have been a ground that the Court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or another provision of law could not have been a ground for review. There was no discovery of a new and important matter or evidence which after due diligence was not within the knowledge of the appellant at the time the judgment and decree was passed. There was no error apparent on the face of the record or any other sufficient reason to justify review. In the Court of Appeal decision of *Rose Kaiza Vs Angelo Mpanju Kaiza 2009*, the Court was categorical that;

“An application for review under order 44 Rules 1 of the Civil Procedure Rules must be clear and specific on the basis upon which it is made...”

4. Order 45, Rule 1(b) is clear that for the court to review its decision, certain requirements should be met. This section 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.
 - (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.”



5. The aforesaid rule is based on section 80 of the *Civil Procedure Act*, Cap. 21 Laws of Kenya which states 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. Under Section 80 of the *Civil Procedure Act*, the court has unfettered discretion to make such orders as it thinks fit on sufficient reason being given for review of its decision. However, this discretion should be exercised judiciously and not capriciously.

7. I have perused the proceedings and record of appeal in great detail. This Appeal arises from the Ruling and Order of the National Environment Tribunal delivered on 30th May 2025 in NET Case No. E003 of 2024, wherein the Tribunal dismissed the Appellants' Application for Review dated 24th March 2025. The dispute before the Tribunal concerned the operations of the 2nd Respondent in relation to a quarry and stone crushing site, and the validity and particulars of the Environmental Impact Assessment (EIA) License issued in respect thereof. Following the hearing of the Appeal before the Tribunal, a Judgment was delivered on 11th March 2025. The Applicant states that the said Judgment contained several material errors and inconsistencies apparent on the face of the record, particularly with regard to the correct EIA License number, the parcel of land upon which the quarry operations were undertaken and the proper identification of the Appellant's director.

8. In particular, the Appellants state that the correct EIA License number is NEMA/EIA/PSL/11825, as consistently reflected in the pleadings and documentary evidence on record; The quarry and stone crushing activities were undertaken on parcel number Machakos/Nguluni/800, and not on Machakos/Nguluni/800/5621 as erroneously stated in the Judgment and the correct name of the Appellant's director is Mr. Kamali Musyoka Kithuva, as evidenced by official records including the CR12 and correspondence on record. I have carefully perused the court record. From the pleadings in the Tribunal and I find that the Appellant therein was challenging the 1st Respondent's decision to revoke the EIA licence as per their notice of Appeal through a letter dated 15th March 2024. Joseph Makau a witness for the 1st Respondent swore a statement stating that the license that was issued and revoked by NEMA was, NEMA/EIA/PSL/11828. The license subject matter of the appeal before the Tribunal was issued by the 1st Respondent (NEMA) on the 10th June 2021 following an application by the Appellant for a license to carry out quarry activities on the portion of land known as Machakos/Nguluni/800/5621. The change of user bore the title No. Machakos/Nguluni/800/5621 and the title deed bore the No. Machakos/Nguluni/800. By a letter dated 4th June 2021 to the County Director Environment Machakos Kamali Musyoka Kithuva confirms that he is operating his quarry on land parcel No. Machakos/Nguluni/800/5621 and the two parcels in question are distinct. The Judgement by the Tribunal noted that there was an ownership dispute between land parcel No. Machakos/Nguluni/800/5621 and Machakos/Nguluni/800 yet to be resolved by the Environment and Land Court. The Tribunal stated that the name Kamali Musyoka Kithuva and Kamali Musyoka Kithuwa have been used interchangeably during the proceedings and in the affidavits. Parties are bound by their pleadings and I find that this, not being the trial court to interrogate all these issues the era if any is not apparent on the face of the record.



9. In Court of Appeal, Civil Appeal No. 211 of 1996, National Bank of Kenya vs Ndungu Njau, the Court of Appeal held that;

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 evidence 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”.

10. From the above provisions of the law, authorities cited and facts of this case I find that the appeal is not merited and I dismiss it with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 28TH DAY OF APRIL 2026.

N.A. MATHEKA

JUDGE

