



REPUBLIC OF KENYA



KENYA LAW
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**Kariuki v Kariuki & 3 others (Environment and Land Case
E162 of 2025) [2026] KEELC 2531 (KLR) (4 May 2026) (Ruling)**

Neutral citation: [2026] KEELC 2531 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E162 OF 2025**

CG MBOGO, J

MAY 4, 2026

BETWEEN

CECILY WANGARI KARIUKI PLAINTIFF

AND

DENNIS MITHAMO KARIUKI 1ST DEFENDANT

ANNE MUMBI KARIUKI 2ND DEFENDANT

CYKA ESTATES LIMITED 3RD DEFENDANT

CO-OPERATIVE BANK OF KENYA LIMITED 4TH DEFENDANT

RULING

1. Before this court is the notice of motion dated 26th November, 2025 filed by the plaintiff/applicant and it is expressed to be brought under Sections 1A,1B,3, and 3A of the *Civil Procedure Act*, Order 45 Rule 1 and Order 51 Rule 1 of the Civil Procedure Rules seeking the following orders:-
 1. That this honourable court be pleased to review the orders issued on 13th November, 2025 of upholding the notice of preliminary objection dated 7th May, 2025.
 2. That the costs of the application be in cause.
2. The application is premised on the grounds on its face. It is further supported by the affidavit of George Mungai Kamau, the learned counsel for the plaintiff/applicant sworn on even date. The learned counsel deposed that the 1st to 3rd defendants/respondents filed the notice of preliminary objection dated 7th May, 2025, which this court delivered its ruling on 13th November, 2025 upholding the said objection. Further, this court in its ruling at paragraph 11, relied on the prayers sought in the Plaintiff dated 17th March, 2025 as opposed to prayers sought in the amended plaint dated 17th June, 2025 which was duly filed and accessible on the e-filing platform before a ruling date was issued.



3. The learned counsel averred that as a result of the foregoing, this court arrived at an erroneous decision without the benefit of all the facts, hence the reason for the application for review of the ruling delivered on 13th November, 2025. The learned counsel deposed that the application has been filed without delay and it would be in the interest of justice to grant the orders sought.
4. The 1st defendant/respondent filed his replying affidavit sworn on 21st January, 2026 in response thereto. He deposed that the plaintiff/applicant has not demonstrated any error or mistake in the ruling delivered on 13th November, 2025 and that there is no new discovery of important material that would warrant the review that she seeks. Further, he deposed that the amended plaint was only filed to defeat the preliminary objection and the plaintiff/applicant did not appraise the court of any such amendment.
5. The 1st defendant/respondent averred that critical facts in the plaint remained as they were and were unchanged, in material or form or character and therefore do not cloth the court with the requisite jurisdiction.
6. The application was canvassed through written submissions. The 1st to 3rd defendants/ respondents filed their submissions dated 10th March, 2025. I have not seen any written submissions filed by the plaintiff/ applicant. Be that as it may, I have considered the application, the reply thereof and the written submissions filed. The issue for determination is whether the plaintiff/ applicant has met the threshold to warrant the review of the ruling of this court delivered on 13th November 2025.
7. The statutory provisions that govern orders of review are Section 80 of the [Civil Procedure Act](#) and Order 45 of the Civil Procedure Rules. Section 80 of the Act 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”
8. Order 45 Rule 1 of the Civil Procedure Rules provides that:-

“ 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. The elements necessary for orders of review have been widely elaborated by the courts. In the case of *Francis Njoroge v Stephen Maina Kamore* [2018] eKLR, the court held that:-

“ Therefore, Order 45 of the Civil Procedure Rules, 2010 is very explicit that a court can only review its orders if the following grounds exist:-



- a. There must be discovery of a new and important matter which after the exercise of due diligence, was not within the knowledge of the applicant at the time the decree was passed or the order was made; or
 - b. There was a mistake or error apparent on the face of the record; or
 - c. There were other sufficient reasons; and
 - d. The application must have been made without undue delay.”
10. The requirements for review are therefore the discovery of a new and important matter that could not have been known at the time the decree or order was issued, a mistake or error apparent on the face of the record, or for any other sufficient reason, and must be made without undue delay. In this case, the plaintiff/applicant averred that the court quoted the prayers in their original plaint dated 17th March, 2025 as opposed to the amended plaint dated 17th June, 2025 which they deem as an error.
11. The Court of Appeal held in *National Bank of Kenya Limited v Ndungu Njau* [1997] eKLR as follows:-
- “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 a 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 proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law.”
12. It is evident that there must be a glaring error on the face of it and as *Mativo, J* (as he then was) held in the High Court at Nairobi Misc. Application 317 of 2018 Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] eKLR: while quoting the case of *Attorney General & O’rs v Boniface Byanyima HCMA No. 1789 of 2000*, the court citing *Levi Outa v Uganda Transport Company {1995} HCB 340*, held that the expression “mistake or error apparent on the face of record” refers to an evident error which does not require extraneous matter to show its incorrectness. It is an error so manifest and clear that no court would permit such an error to remain on the record. It may be an error of law, but law must be definite and capable of ascertainment.” (emphasis mine) The court went on to make the following observation...
- “There is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by ‘error apparent’. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected. A review lies only for patent error where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out, see the decision in *Thungabhadra Industries Ltd. v. Govt. of A.P.1.*”
13. The notice of preliminary objection dated 7th May, 2025 challenged the plaint dated 17th March, 2025. This court went ahead and determined what was raised in the objection and analysed the same as per the submissions filed by the parties. It will be noted that in her submissions, the plaintiff/applicant did not bring it to the attention of the court that there was an amended plaint that was filed. Notably, and as I would agree with the 1st to 3rd defendants/respondents, the amended plaint was filed after the objection, and the same was not brought to the attention of the court. On the same vein, the plaintiff/



applicant did not seek leave of the court to file an amended plaint. As it is, the amended plaint lies in the case tracking system as if with no effect until the plaintiff/applicant moves the court accordingly.

14. Having said the above, and in my view, there is no substantial error of law on the face of the ruling of 13th November, 2025. The issues in dispute in the amended plaint dated 17th June, 2025 are still issues regarding a claim of fraudulent loans and charges and changes of shareholding, which are all commercial matters and not issues involving title to land as defined under Article 162(2)(b) of the Constitution save for the additional prayer seeking permanent injunction.
15. I reiterate that this court does not have jurisdiction to hear and determine the plaintiff/applicant's claim in the plaint dated 17th March, 2025. There is no error on the face of the record to warrant review of the ruling of this court delivered on 13th November, 2025. Thus, the notice of motion dated 26th November, 2025 lacks merit and it is hereby dismissed with costs to the 1st to 3rd defendants/respondents.

It is so ordered.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 4TH DAY OF MAY, 2026.

HON. MBOGO C.G.

JUDGE

04/05/2026.

In the presence of:

Ms. Benson Agunga - Court assistant

Ms. Washalla holding brief for Mr. Mungai Kamau for the Plaintiff/Applicant

Mr. Karwanda holding brief for Mr. Wachira for the 1st, 2nd and 3rd Defendants/Respondents

