

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT NAKURU**  
**ELC NO. E077 OF 2024**

**AGNES CHEPKELAT AND PETER MUTAI (Suing as  
the legal representatives of the Estate of MICHAEL  
KIPKOSKEI CHEPKELAT.....PLAINTIFF/APPLICANTS**

**VERSUS**

**WILLIAM WANJOHI  
MUREITHI .....1<sup>ST</sup> DEFENDANT/RESPONDENT  
EVANS BABU.....2<sup>ND</sup>DEFENDANT/RESPONDENT  
JANE CHEPKORIR KIBIEMTO.....3<sup>RD</sup>DEFENDANT/RESPONDENT  
LAND REGISTRAR – NAKURU  
COUNTY.....4<sup>TH</sup> DEFENDANT/RESPONDENT  
PRISCA NYABOKE  
MATUNDA.....5<sup>TH</sup> DEFENDANT/RESPONDENT  
STEPHEN MTABISA M’KAWALE.....6<sup>TH</sup> DEFENDANT/RESPONDENT  
MARY WANGUI MUTUA.....7<sup>TH</sup> DEFENDANT/RESPONDENT  
COSMAS KIPNGETICH CHELULE.....8<sup>TH</sup> DEFENDANT/RESPONDENT  
NATIONAL BANK OF KENYA.....9<sup>TH</sup> DEFENDANT/RESPONDENT**

**RULING**

1. This ruling is in respect of a Notice of Motion application dated 15<sup>th</sup> December, 2025, by the Plaintiff/Applicants seeking the following orders:
  - a) *Spent.*
  - b) *Spent.*
  - c) *THAT the Honourable court be pleased to review its ruling delivered on 30<sup>th</sup> October, 2025.*
  - d) *THAT upon granting prayer C above, the honourable court be pleased to direct the 3<sup>rd</sup> defendant/respondent to remove the erected fence and maintain the demarcations on the suit property as they were on 14<sup>th</sup> November, 2024 when the suit herein was filed.*

***e) THAT the honourable court be minded to direct the OCS Kaptembwo Police Station to oversee the implementation of prayer D above.***

***f) THAT the costs of this application be provided for.***

2. The application is grounded on the supporting affidavit of Peter Mutai, the 2<sup>nd</sup> Applicant, where he deponed that they had filed an application dated 14<sup>th</sup> November, 2024, that sought temporary injunction orders against the Respondents on parcel No. MITI MINGI/MBARUK/BLOCK 3/330 (MBARUK) which was subdivided into MITI MINGI MBARUK/BLOCK 8149 to 8158.
3. He deponed that on 30<sup>th</sup> October, 2025, the court dismissed the application on the grounds that the injunction orders sought against the Respondents had already been overtaken by events thus could not be issued, and that contrary to the court's ruling, there was no interference, subdivision and/or sale by public auction of the subdivisions of the parcel land prior to filing of the application.
4. It was the Applicant's disposition that there was an error and/or mistake apparent on the face of record being that they were not seeking injunctive orders restraining any sale and or subdivision of the property MITI MINGI/MBARUK/BLOCK 3/330 (MBARUK) but in respect of its subdivisions MITI MINGI MBARUK/BLOCK 8149 to 8158.
5. The Applicant further deponed that on 13<sup>th</sup> December 2025, the 3<sup>rd</sup> Respondent erected a fence on the portion of the suit parcel which they were in occupation thus divested of the use and occupation of their property, and urged the court to review its ruling issued on 30<sup>th</sup> October, 2025, in the interest of justice.

6. In response to the Application, the 1<sup>st</sup> Respondent, William Wanjohi Mureithi, filed a Replying Affidavit sworn on 19<sup>th</sup> January, 2026, where he deponed that the application was incompetent and an abuse of the court process, as the Applicants failed to satisfy the grounds for review.
7. The Respondent deponed that the Applicants pleaded and argued in their application that the subdivisions 8149-8158 emanated from the dealings of 3/330 and they cannot now selectively disown the factual and legal nexus of the two. Further, the dissatisfaction with court's reasoning did not constitute an error apparent on the face of record, hence the Applicants are inviting the court to sit on appeal over its own ruling which is procedurally impermissible.
8. The 1<sup>st</sup> Respondent averred that review proceedings cannot be founded on subsequent events or fresh disputes arising after the ruling, as the same could only be addressed through a separate substantive application and hence, allowing the present application would prejudice him and other innocent purchasers who lawfully acquired their interest on the parcel of land and have since undertaken developments.
9. The 3<sup>rd</sup> Respondent, Jane Chepkorir Kibiemto also filed a replying affidavit sworn on 10<sup>th</sup> March, 2026, and deponed that she is the registered owner of the resultant parcels 3/8151-8156 having purchased from the 1<sup>st</sup> Respondent. It was her disposition that the application was a misrepresentation and abuse of the court process since the Applicants communicated to them that the bank was at liberty to sell to them the suit parcel.

10. She further deponed that there was correspondence between the Applicant and the 9<sup>th</sup> Respondent where they negotiated a settlement of the outstanding sum which the Applicant failed to abide by resulting to sale by public auction. Further, the application seeking injunctive orders against construction of the properties has been overtaken by events. The suit ought to be heard and determined on merit so as to determine the rightful owner of the subdivided parcels.
11. The 9<sup>th</sup> Respondent Edwin Lubanga, filed his replying affidavit sworn on 4<sup>th</sup> April, 2026, where he deponed that the application was an afterthought, devoid of merit and ought to be dismissed with costs. Further that the Applicants had sought injunctive orders in the original suit parcel together with its resultant sub-divisions; hence the Applicants have not met the threshold for review on account of an error apparent on the face of the record.

#### **APPLICANTS' SUBMISSIONS**

12. Counsel for the Applicants filed submissions dated 19<sup>th</sup> February 2026, and identified the following issues for determination:
  - a) *Whether this Honourable Court's ruling delivered on 30<sup>th</sup> October, 2025, contains an error apparent on the face of the record, particularly regarding the finding that the injunctive orders sought in the application dated 14<sup>th</sup> November, 2024, had been overtaken by events?*
  - b) *Whether the actions of the 3<sup>rd</sup> Defendant/Respondent undertaken on 13<sup>th</sup> December, 2025, constitute sufficient cause and/or new and important matter warranting review and/or variation of the Court's earlier orders?*
  - c) *Whether, pending the hearing and determination of the suit, this Honourable Court should grant injunctive relief restraining the Defendants/Respondents from further interference with land parcels MITI MINGI/MBARUK/BLOCK 8149 to 8158?*

- d) Whether the Plaintiff/Applicants have met the legal threshold for review of the said ruling?*
- e) Who should bear the costs of this application?*
13. On the first issue, as to whether this Honourable court's ruling delivered on 30<sup>th</sup> October, 2025, contains an error apparent on the face of the record, particularly regarding the finding that the injunctive orders sought in the application dated 14<sup>th</sup> November, 2024, had been overtaken by events, counsel submitted that the Application expressly sought injunctive relief restraining interference, alienation, construction upon, or any dealings with land parcels MITI MINGI/MBARUK/BLOCK 8149 to 8158, being subdivisions emanating from MITI MINGI/MBARUK/BLOCK 3/330 (MBARUK).
14. It was counsel's further submission that the court in dismissing the application held that the injunctive orders sought had already been overtaken by events, and could not issue them in vain. He also stated that the court's conclusion appeared to have been premised on the fact that the mother parcel, namely MITI MINGI/MBARUK/BLOCK 3/330 (MBARUK), had already been sold and subdivided.
15. Mr. Chumba, submitted that the application did not seek to restrain the sale or subdivision of the mother parcel but instead sought to restrain interference with the resultant parcels being MITI MINGI/MBARUK/BLOCK 8149 to 8158 pending the determination of this suit. According to counsel, at the time of filing the application, there had been no demonstration of

interference, alienation, or construction upon those specific parcels that would render the injunctive relief nugatory, hence the dismissal of the application was grounded on misperception between the mother title and the resultant subdivisions thus constituting an error apparent on the face of the record.

16. Counsel relied on Section **80(b)** of the **Civil Procedure Act, Order 45 rule (1) (b) of the Civil Procedure Rules** and the Court of Appeal cases of **Kenya Trypanosomiasis Research Institute V Anthony Kabimba Gusinjilu (Suing for and on behalf of 112 Plaintiffs) [2019] eKLR** and **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**, and urged the court to review the ruling in order to prevent miscarriage of justice, and to preserve the subject matter of the suit pending its determination.
17. On the second issue, as to whether the actions of the 3<sup>rd</sup> Defendant/Respondent undertaken on 13<sup>th</sup> December, 2025, constitute sufficient cause and/or new and important matter warranting review and/or variation of the Court's earlier orders, counsel submitted in the affirmative and urged the court to find that the application for review has merit.
18. Counsel further submitted that from the evidence on record, it was demonstrated that the impugned actions occurred after the delivery of the court's ruling, as the 3<sup>rd</sup> Respondent with the assistance of Police Officers,

erected a fence on a portion of the suit property occupied and utilized by the Applicants.

19. It was counsel's submission that the above events were neither in existence nor within the contemplation of the court at the time of delivering its ruling and therefore qualified as new and important matter arising subsequent to the decision of the court. He stated that the actions complained of fundamentally altered the *status quo* that existed as at 30<sup>th</sup> October, 2025, hence the conduct demonstrated discovery of new and important matter thus a sufficient reason for review of the impugned ruling.
20. On the third issue, as to whether pending the hearing and determination of the suit, this Honourable Court should grant injunctive relief restraining the Defendant/Respondents from further interference with land parcels MITI MINGI/MBARUK/BLOCK 8149 to 8158, counsel submitted in the affirmative and urged the court to grant the order as prayed. Counsel relied on the case of **Kenya Airline Pilots Association (KALPA) Vs Co-operative Bank of Kenya Limited & another [2020] eKLR** and Order 40 rule 2 of the Civil Procedure Rules.
21. It was counsel's submission that damages may not adequately compensate Applicants as the Respondents' ongoing violation of their proprietary rights and that the unlawful deprivation constitutes irreparable harm.

22. On the fourth issue, as to whether the Plaintiff/Applicants have met the legal threshold for review of the ruling, counsel relied on the cases of **Republic V Public Procurement Administrative Review Board & 2 others [2018] KEHC 380 (KLR)** and **Otieno Ragot & Company Advocates v National Bank of Kenya Limited [2016] KEHC 3682 (KLR)**, and submitted that the confusion of the mother parcel with the resultant subdivisions constituted misapprehension of fact, and such misdirection amounted to an error apparent on the face of the record. Further that subsequent to the delivery of the ruling, the 3<sup>rd</sup> Respondent undertook overt acts of interference, including fencing off a portion of the suit property and destroying crops which were not in existence at the time the ruling was delivered.
23. Counsel therefore urged the court to allow the application as prayed with costs.
24. The Respondents relied on their Replying affidavits hence did not file submissions.

### **ANALYSIS AND DETERMINATION**

25. The issue for determination is whether the Applicants have met the threshold for review of this court's ruling dated 30<sup>th</sup> October, 2025, under Order 45 Rule 1 of the Civil Procedure Rules.
26. Applications for review are provided for under **Order 45 Rule 1 (1)** of the **Civil Procedure Rules** as follows:

***“1. Application for review of decree or order***

*(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.”*

27. In the Court of Appeal case of **Muyodi V Industrial and Commercial Development Corporation & Anor** [2006] 1 EA 243 the court held as follows:

*“In Nyamogo and Nyamogo V Kogo [2001] EA 174 this Court said that an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by a long-drawn process of reasoning or on points where there may conceivably be two opinions*

*can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the Court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was also possible. Mere error or wrong view is certainly no ground for a review although it may be for an appeal. This laid down principle of law is indeed applicable in the matter before us.”*

28. Similarly in the case of **National Bank of Kenya Ltd V Ndungu Njau [1997] eKLR**, the court 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-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. Misconstruing a statute or other provision of law cannot be a ground for review.”*

29. The Applicants filed an application dated 14<sup>th</sup> November 2024 seeking the following orders:

- a) Spent*
- b) Spent*
- c) THAT the Defendant/Respondents herein be restrained whether by themselves, their agents, servants, employees and/or however else from constructing (or continuing to construct) upon the property,*

*charging, selling or alienating or causing any interference on the property known as MITI MINGI/MBARUK/BLOCK 3/330 (MBARUK) subdivided into MITI MINGI/MBARUK/BLOCK 8149 to 8158 which is the subject of this suit pending the hearing and determination of this suit.*

*d) THAT this Honourable Court be minded to direct that the OCS Kaptembwo Police Station to oversee the implementation of the orders herein.*

*e) THAT the costs of this application be provided for.*

30. The court heard the Application and vide a ruling dated 30<sup>th</sup> October 2025, dismissed the same on the ground that the Respondents action of subdivision had already taken place hence overtaken by events.
31. The Applicants argue that the issue was not to stop the subdivision of the parcel of land but to preserve it pending the hearing and determination of the case. An Applicant who seeks review/variation/setting aside of an order of the court must meet the principles as laid down under Order 45 Rule 1 of the Civil Procedure Rules. The Application must be made without unreasonable delay, 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.
32. If an Applicant meets the above, then the court would not hesitate to review the orders earlier granted. Note that an Applicant cannot use two avenues

namely: a review and an appeal at the same time, as a review is distinct from an appeal. There are matter which do not qualify for review, especially where the Applicant wants the court to re-evaluate the case on merits or where the Applicant challenges the decision of the court. In such a situation it will be an Appeal and not a review.

33. In the case of **Multichoice (Kenya) Ltd v Wananchi Group (Kenya) Limited & 2 Others [2020] eKLR**, the Court of Appeal held that:

*“It bears emphasizing that the phrase "mistake or error apparent" by its very connotation conveys the fact that the error envisaged is one which is evident per se from the record and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. It is prima-facie visible. It must relate to an error of inadvertence, one which strikes one on merely looking at the record. An apparent error on the face of the record has been described in the most simplified manner by the Tanzania Court of Appeal adopting with approval commentaries by Mulla, Indian Civil Procedure Code, 14<sup>th</sup> Edition Pg 2335-36...”*

34. From the record, it is clear that the error apparent on the face of record is visible and does not require detailed examination or scrutiny of the facts or the legal position. The error in this case relates to an error of inadvertence in dealing with the application for injunction on the premise that it was to stop the subdivision from happening whereby the court ruled that it had been overtaken by events.

35. I find that the application has merit, and therefore make an order of *status quo* to be maintained pending the hearing and determination of this suit. Parties to fast track the hearing of this case.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 14<sup>TH</sup>  
DAY OF MAY 2026.**

**M. A. ODENY  
JUDGE**