



Kenyariri v Double Win Company Limited & 3 others (Environment and Land Case E288 of 2022) [2025] KEELC 5967 (KLR) (29 August 2025) (Ruling)

Neutral citation: [2025] KEELC 5967 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E288 OF 2022
CG MBOGO, J
AUGUST 29, 2025**

BETWEEN

CHRISTOPHER O KENYARIRI PLAINTIFF

AND

DOUBLE WIN COMPANY LIMITED 1ST DEFENDANT

MIA YUNFEI 2ND DEFENDANT

LIU YUPING 3RD DEFENDANT

EQUITY BANK (KENYA) LIMITED 4TH DEFENDANT

RULING

1. Before this court is the notice of motion dated 21st March, 2025 filed by the plaintiff/applicant. It is expressed to be brought pursuant to Order 45 Rule 1 and Order 51 Rule (1) of the Civil Procedure Rules seeking the following orders:-
 1. Spent.
 2. The Hon, court be pleased to review its finding at paragraph 12 of its ruling delivered on 20th March 2025 and find that the 4th defendant is under a duty to produce the account statements of the 1st defendant and the duly executed discharge of charge by the bank officials over title no. Nairobi/ Block 19/242.
 3. Costs of this application be provided for.
2. The application is premised on the grounds on its face. It is further supported by the affidavit of the plaintiff/applicant sworn on even date. The plaintiff/applicant deposed that there is an error apparent on the face of the record that requires a review of the ruling. He deposed that the discharge of charge annexed to the 1st defendant's replying affidavit refers to a non-existent title number 1/95, and that the



- encumbered title in question is title no. Nairobi/ Block 10/242. He deposed that it is only fair that the court reviews its ruling and finds that the 4th defendant/respondent is under a duty to produce the bank statements of the 1st defendant and a discharge of charge over title no. Nairobi/Block 19/242.
3. The 2nd defendant/respondent filed his replying affidavit sworn on 4th April, 2025 in response to the application. The 2nd defendant/respondent deposed that the property was charged to the 4th defendant/respondent, the loan was repaid and a discharge of charge was registered. Further, an application for change of user was approved and lease conditions issued where the mother title was converted and surrendered to the lands' office for issuance of the new title. The 2nd defendant/respondent deposed that property LR. No. 1/95 and Nairobi/Block 19/242 refer to the same property, and the court's reference to the LR no. in the discharge of charge is accurate. He reiterated that the property is not charged to Equity Bank and the Discharge of Charge has since been registered.
 4. The 3rd defendant/respondent filed his replying affidavit sworn on 4th April, 2025. The said affidavit contains similar depositions to those made by the 2nd defendant/respondent. There would be no need to reproduce the same.
 5. The 4th defendant/respondent filed its response through the replying affidavit of Samuel Wamaitha sworn on 3rd April, 2025. The 4th defendant/respondent deposed that LR. No. 1/95 and Nairobi/Block 19/242 refer to one and the same property. Further, that the 4th defendant/respondent held the original title as security for a loan facility that was advanced to the 1st defendant. The 4th defendant/respondent further deposed that it executed a discharge of charge upon full repayment of the loan, and that the conversion of the mother title was undertaken by the 1st defendant/respondent. It was deposed that the title was discharged and the same can be confirmed by the search conducted on 5th March, 2025.
 6. The application was canvassed by way of written submissions. The plaintiff/applicant filed his written submissions dated 9th May, 2025. The plaintiff/applicant submitted that the title no. 1/95 referred to in the ruling is different from Nairobi/Block 19/242 which shows an encumbrance. He submitted that there cannot exist two titles on the same property as alleged by the defendants. While relying on the case of *Akoko v National Police Service Commission (Civil Appeal 686 of 2021) [2024] KECA 485 (KLR) (9 May 2024) (Judgment)*, the plaintiff/applicant questioned why upon issuance of a new generation title that there was an encumbrance reflected if at all the discharge of charge was effected in 2021 as alleged.
 7. The 4th defendant/respondent filed its written submissions dated 27th June, 2025. While relying on the cases of *Nyamogo & Nyamogo v Kogo [2001] eKLR*, *National Bank of Kenya Ltd v Ndungu Njau [1996] eKLR*, and *Attorney General & Others v Boniface Byanyima [2000] eKLR*, the 4th defendant/respondent submitted that the contention that the ruling contains a mistake or error apparent on the face of the record does not meet the threshold contemplated under Section 80 of the *Civil Procedure Act*. Further, that the power of review is a narrow and exceptional jurisdiction confined strictly to the parameters defined therein, particularly to correct a manifest error or mistake that is self-evident and does not require elaborate reasoning or factual inquiry. The 4th defendant/respondent submitted that the alleged mistake claimed that the ruling refers to a non-existent title deed collapses upon close scrutiny of the facts on record.
 8. In conclusion, the 4th defendant/respondent submitted that the review sought is not anchored on any demonstrable mistake or error as envisioned under the law.
 9. I have considered the application, the replies thereof and the written submissions filed by the plaintiff/applicant and the 4th defendant/respondent. The issue for determination is whether the plaintiff/



applicant has established sufficient grounds to warrant a review of this court's ruling delivered on 20th March, 2025.

10. Section 80 of the *Civil Procedure Act* 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.”

11. Order 45 of the Civil Procedure Rules sets out the rules for the review as follows: -

“ 45 (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 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 review of judgment to the court which passed the decree or made the order without unreasonable delay.”

12. Paragraph 12 of the ruling that was delivered on 20th March, 2025 reads as follows:-

“ Having considered the above, and bearing in mind that it is within the right of the plaintiff/ applicant to obtain information which he feels are relevant in the case, it is my finding that merely stating that the said documents are relevant and necessary is not sufficient in the circumstance. The plaintiff/applicant has not informed the court whether it is for inspection or discovery of any new information. Besides, and upon perusal of the court record, the securities withdrawal request form was filed on 7th August, 2024, and the discharge of charge is as contained in the 1st defendant's replying affidavit. I wonder why the plaintiff/ applicant has not sought production of these documents from the 1st defendant as well.”

13. In arguing his application, the plaintiff/applicant contended that there is an error apparent on the face of the record that requires a review of the ruling. He deposed that the discharge of charge annexed to the 1st defendant's replying affidavit refers to a non-existent title number 1/95, and the encumbered title in question is title no. Nairobi/ Block 10/242.

14. In Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] KEHC 6379 (KLR), Mativo J (as he then was) made the following observations:-

18. The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 45 Rule 1 of the Civil Procedure Rules and



Section 80 of the Act. To put it differently an order, decision, or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.

19. The wisdom flowing from jurisprudence on this subject is that no error can be said to be apparent on the face of the record if it is not manifest or self-evident and requires an examination or argument to establish it.[11] In the instant case therefore, I am not convinced that there is an error apparent on the face of the record. What the applicant is raising requires examination and argument. He argues that he was not supplied with a copy of the judgment. The Respondent's position is different. Its position is that the applicant was personally present in court when the judgment was delivered. It also states that the applicant was supplied with a copy of the judgement. The Respondent denies that the judgement was delivered to the applicant's office as he alleges. It is common ground that the judgment was annexed to the Respondent's Replying Affidavit. The applicant also states that the judgment was signed by a different panel other than the panel that heard the case. The Respondent's explanation to this allegation (which is supported by the record) is that the panel, which heard the case, prepared the judgment. However, a different panel on its behalf delivered it.
20. Review is impermissible without a glaring omission, evident mistake or similar ominous error. An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by an order or review.
21. The power of review is available only when there is an error apparent on the face of the record. I emphasize that review proceedings are not an appeal. The review must be confined to error apparent on the face of the record and re-appraisal of the entire evidence or how the judge applied or interpreted the law would amount to exercise of Appellate Jurisdiction, which is not permissible.^[12]
15. While I adopt the observation in the above cited authority, and upon careful analysis of this application, the plaintiff/applicant urges this court to find an error which if adopted, would result in a different conclusion ultimately in his favour. He argues that the court should understand that there is an error in paragraph 12 and 'find' that the 4th defendant is under a duty to produce the statement of accounts. A general reading of this application and even the responses is clear that the plaintiff/applicant is attempting to relitigate the notice of motion 19th September, 2024. I say this because the replying affidavits contains averments that were raised in that application, and which the defendants/respondents gave their position concerning the same.
16. In my view, when review is sought on such grounds, it should not be difficult to detect the error because it must not require too much reasoning or a lot of argument. It should be straight forward and clear. Without attempting to make any further pronouncement, and if at all say I would consider the application, the response by the 4th defendant/respondent including the annexures answers the plaintiff/applicant's question.
17. From the above, the orders sought in the instant application cannot succeed for the reason that there is no error apparent on the face of the record. Being displeased by the said ruling, the plaintiff/applicant was at liberty to appeal the said decision. The notice of motion dated 21st March, 2025 lacks merit and it is dismissed with costs to the defendants/respondents.



Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 29TH DAY OF AUGUST, 2025.

HON. MBOGO C.G.

JUDGE

29/08/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Dr. Kenyariri for the Plaintiff

Mr. Mbaji for the 4th Defendant

Mr. Tanui for the 1st to 3rd Defendants

