



Agnes Nyaloya Lukwa (Suing as the Legal Representative of the Estate of the Late Julius Muhambi Amayi (DCD) v Imbuusi (Environment & Land Case 10 of 2020) [2025] KEELC 887 (KLR) (27 February 2025) (Ruling)

Neutral citation: [2025] KEELC 887 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE 10 OF 2020
DO OHUNGO, J
FEBRUARY 27, 2025**

BETWEEN

AGNES NYALOYA LUKWA (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE JULIUS MUHAMBI AMAYI (DCD) APPLICANT

AND

ANTONY PANGA IMBUUSI RESPONDENT

RULING

1. Following delivery of judgment in this matter on 15th November 2023, the Applicant moved the Court through Notice of Motion dated 29th November 2023, seeking stay of execution of the judgment and decree and maintenance of status quo prevailing on the suit property pending hearing and determination of her appeal to the Court of Appeal.
2. Pursuant to ruling delivered in this matter on 20th June 2024, this court granted the Applicant stay of execution in the following terms:
 - a. I grant stay of execution of the judgment and decree herein pending hearing and determination of the Applicant's appeal to the Court of Appeal.
 - b. I make no order as to costs of the application.
 - c. The stay is conditional on the Applicant depositing in court such sum as will be determined to be the party and party costs of this suit.
 - d. The deposit to be made within 21 (twenty-one) days of the costs being taxed or agreed. In default, the stay orders shall automatically lapse, and Notice of Motion dated 29th November 2023 shall stand dismissed.



- e. The stay orders shall, if the Applicant complies with the conditions in (c) and (d) above, remain in force for a period of only 2 (two) years from the date of delivery of this ruling, unless otherwise extended in the Appellate Court.
3. After delivery of the above ruling, the Respondent filed his bill of costs which was taxed at KShs 187,663.33 on 3rd October 2024. Subsequently, the Applicant filed Notice of Motion dated 23rd October 2024, which is the subject of this ruling. The application seeks the following orders:
1. That this Application be certified as urgent and service upon the defendant be dispensed with at first instance.
 2. That the Honorable Court be pleased to stay execution of the Orders on costs issued herein on 20/06/2024 pending hearing interpartes.
 3. That the Orders on costs made herein by this Honourable Court on 20/06/2024 be reviewed, varied and or set aside.
 4. That the costs of this application be provided for.
4. The application is based on the grounds on the face thereof and is supported by an affidavit sworn by the Applicant. She deposed that she had made all efforts to raise the taxed costs of KShs 187,663.33 but her efforts had not borne any fruit since she was a widow, a housewife and the only breadwinner for her children with no means to raise any part of the amount. She referred to advice received from her advocates and added that enforcement of the order of 20th June 2024 would render her homeless since she had no other home save for the suit property. She further deposed that she had obtained certified proceedings and was keen to prosecute her appeal at the earliest opportunity.
5. The Respondent opposed the application through a replying affidavit in which he deposed that the Applicant had a right of appeal but failed to abide by the conditions or even seek enlargement of time. That the Applicant's claims of being a pauper were not true and unsubstantiated. He urged the Court to dismiss the application.
6. The application was canvassed through written submissions. The Applicant filed undated submissions on 25th November 2024 while the Respondent filed submissions dated 4th December 2024.
7. I have considered the application, the affidavits and the submissions. The sole issue for determination is whether the orders of 20th June 2024 should be reviewed to allow the Applicant to provide alternative security.
8. The application is brought under Sections 80, 63 (e) and 3A of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procure Rules. The Applicant is seeking review of the orders of 20th June 2024.
9. Order 45 Rule 1 of the Civil Procure Rules provides:
- 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.

10. The Court of Appeal summed up the law relating to review in *Mutisya (Suing as the personal representative of the Estate of Simon Wambua Makau (Dcd)) v Macharia t/a Three Bins Services & another* [2023] KECA 234 (KLR) thus:

Section 80 of the *Civil Procedure Act* and Order 45 rule 1 of the Civil Procedure Rules are instructive on the principles applicable in a review application. A reading of the above provisions clearly shows that while Section 80 (f) of the *Civil Procedure Act* grants the court power to make orders for review, Order 45 sets out the jurisdiction and scope of review by hinging review to discovery of new and important matters or evidence, mistake or error on the face of the record and any other sufficient reason.

11. As is manifest from her submissions, the Applicant is seeking review under the limb of “any other sufficient reason.” According to her, the sufficient reason is that she is poor and unable to deposit the taxed costs. Besides citing alleged poverty, the Applicant contends that the requirement that she deposits taxed costs within 21 (twenty-one) days of the taxation gave her very little time. In arguing so, she is challenging the merit of the order fixing time for depositing the amount. A mistake of law or fact cannot be a valid ground for review. See *National Bank of Kenya Ltd V. Ndungu Njau* [1997] eKLR. Equally, such a mistake, if any, does not constitute “sufficient reason” to warrant review.
12. I note that the Applicant’s dissatisfaction with the conditions of the stay only arose four months after the ruling of 20th June 2024 was delivered. I consider that period of delay to be unreasonable. Further, I am not persuaded that this Court’s ruling should become amenable to review on account of a separate decision as to quantum of costs made by the taxing officer.
13. If the terms of stay were not acceptable to her, the Applicant had an option, under Order 42 rule 6 (1) of the Civil Procedure Rules, to file her appeal in the Court of Appeal and renew her application for stay there. I am not persuaded that based on the material before the Court, a case has been made to allow review of the orders of 20th June 2024.
14. I find no merit in Notice of Motion dated 23rd October 2024, and I therefore dismiss it with costs to the Respondent.

DATED, SIGNED, AND DELIVERED THROUGH MICROSOFT TEAMS, AT NYAMIRA, THIS 27TH DAY OF FEBRUARY 2025.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

Mr Biketi for the Applicant

Ms Kadenyi for the Respondent

Court Assistant: B Kerubo

