



**Northern Block Residents Limited & another v NEMA & 2 others (Environment and Planning  
Judicial Review E001 of 2023) [2025] KEELC 971 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 971 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND PLANNING JUDICIAL REVIEW E001 OF 2023  
AA OMOLLO, J  
FEBRUARY 27, 2025**

**BETWEEN**

**NORTHERN BLOCK RESIDENTS LIMITED ..... 1<sup>ST</sup> APPLICANT**

**CAROLINE WANGARI MURIUKI, HENRY CHEGE NJOROGE, JATIM  
PATEL AND LUCY MUTHOMI NJOROGE (SUING FOR AND BEHALF OF  
KITUSURU RESIDENTS ASSOCIATION) ..... 2<sup>ND</sup> APPLICANT**

**AND**

**NEMA ..... 1<sup>ST</sup> RESPONDENT**

**CITY COUNTY OF NAIROBI ..... 2<sup>ND</sup> RESPONDENT**

**MAKANJAWA COMPANY LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The 3<sup>rd</sup> Respondent/Applicant filed a notice of motion dated 4<sup>th</sup> November 2024 supported by an affidavit sworn by Nicholas Kayu Muigai on the same date seeking the following the orders;
  - a. That this Honourable court be pleased to review and set aside the court orders issued on the 17<sup>th</sup> October 2024 directing that an order of Certiorari be issued removing into the Court and quashing forthwith the notification of Approval dated the 13<sup>th</sup> January 2023 bearing application number PLUPA-COU-000533N in favour of the 3<sup>rd</sup> Respondent for the change of use and development on LR No. 17/261 (Nairobi Block 218/770) with coordinates – 1.2369, 36.7813 situated in Kitusuru, Westlands Sub-county, along Kitusuru road.
  - b. That this Honourable court be pleased to review and set aside the court orders issued on the same date directing that an order of prohibition do issue against the third respondent stopping the third respondent from continuing with, any demolitions, renovations, and or construction works on the property known as LR No. 17/261 (Nairobi Block 218/770) with coordinates –



1.2369, 36.7813 situated in Kitusuru, Westlands Subcounty, along Kitusuru road unless and until a change of user license is procedurally obtained.

- c. That the costs of this application be in the cause.
2. The motion was on supported by the grounds listed on its face inter alia that;
    - i. The 3<sup>rd</sup> Respondent has evidenced that it legitimately acquired all the approvals from the 1<sup>st</sup> and 2<sup>nd</sup> Respondent who have not objected to the same as they state that the 3<sup>rd</sup> Respondent adhered to all applicable laws governing the Land Use Planning and Development within the City County of Nairobi.
    - ii. The Applicants have not provided substantial legal or factual grounds to justify quashing the decision to issue the Notification of Approval from the 2<sup>nd</sup> Respondent.
    - iii. The relevant legal framework establishes a timeframe of 14 days within which appeals against the decision on an application for development permission can be lodged and the applicants failed to initiate any legal action within the prescribed period hence they are guilty of laches.
    - iv. The 3<sup>rd</sup> Respondent stands to be extremely prejudiced by the writ orders issued because there are ongoing construction works and financial undertakings that are time-bound, where if the execution does not proceed, the 3<sup>rd</sup> Respondent will be exposed to irreparable loss.
    - v. From the foregoing, it is clear that there is sufficient error of fact apparent on the face of the record and this court should lift the writ orders and not entertain them as they are based on misconstrued facts which are sufficient to warrant an order for review of the judgment.
  3. Mr Muigai deposed that all relevant approvals were obtained, including an Environmental Impact Assessment license from the National Environment Management Authority (NEMA) on 21<sup>st</sup> March 2023, which was annexed as exhibit “NM-2.” Additionally, that a Change of Use for the property was advertised in the daily Nation newspaper of 5<sup>th</sup> November 2022, as required by the Physical Land Use and Planning Act. A copy of the newspaper cut-out was annexed as “NM-3.”
  4. That the application for the Change of Use from Residential to Residential hotel was made to the Nairobi City County on 8<sup>th</sup> November 2022 and approved on 13<sup>th</sup> January 2023, with the approval document annexed as exhibit “NM-4.” The applicant further stated that the construction project on the property began with all necessary approvals in place and is still ongoing, with the 3<sup>rd</sup> Respondent having financial obligations related to the project.
  5. She contended that there is an apparent error of fact in the record, which needs to be addressed adding that if the judgment is not reviewed, the 3<sup>rd</sup> Respondent will suffer great prejudice and injustice, as all required procedures were followed. They stated that Applicants in this suit have not provided substantial legal or factual grounds to justify quashing the decision to issue the Notification of Approval from the 2<sup>nd</sup> Respondent.
  6. The 2<sup>nd</sup> Ex Parte Applicant who is now the Respondent opposed the motion vide a replying affidavit sworn on 11<sup>th</sup> December 2024 by Caroline Wangari Muriuki, its Deputy Chairperson. She stated that the 3<sup>rd</sup> Respondent has not presented a specific or visible error in the record. That the issue of laches, repeatedly raised by the 3<sup>rd</sup> Respondent, was previously resolved at the leave stage, making the matter res-judicata. Further, she avers that laches is not a valid ground for review and that any challenge to the court’s decision to grant leave should have been appealed before the hearing of the substantive motion.



7. They also dispute the 3<sup>rd</sup> Respondent's allegations regarding the Applicants' legal or factual grounds for quashing the Notification of Approval, asserting that such matters cannot be reviewed under the Kenyan law. She notes that the 3<sup>rd</sup> Respondent improperly introduced new evidence, a newspaper cut-out from the Daily Nation of 5<sup>th</sup> November 2022, which had not been presented during the judicial review proceedings and lacks justifiable cause for its late introduction.

**Analysis and Determination:**

8. I have read and considered the grounds pleaded in support of the motion together with the facts set out in supporting affidavit vis-a-vi the replying affidavit filed in opposition thereto. The law governing whether or not to grant an order of review is found in Order 45 rule 1(b) of the Civil Procedure Rules, which provides as follows:

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“(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.

9. The 3<sup>rd</sup> Respondent based his application for review on the ground of errors of fact. In case of Republic v Medical Practitioners & Dentists Board & Another & another; MIO1 on behalf of MIO2 (a Minor) & another (Interested Party); Kingángá (Exparte) (Miscellaneous Civil Application 59 & 63 of 2019 (Consolidated)) [2021] KEHC 298 (KLR) (Judicial Review) (16 November 2021), Mativo J (as he then was) stated at paragraph 44 that,

“An error cannot be said to be apparent on the face of the record if one has to travel beyond the record to see whether the judgment is correct or not.”

10. In the decision sought to be reviewed, at paragraph 49 and 50 of the judgement, I stated that the documents annexed in the replying affidavit demonstrated the public participation undertaken was in respect of the EIA license. At paragraph 51, I stated that there was no evidence of publication of the proposed change of user put up by the Applicant. Pursuant to the filing of this application, I have once again perused the annexures to the said replying affidavit sworn to oppose the substantive motion and for no evidence of any such notification carried out in the newspaper.
11. Instead, the applicant has now introduced the newspaper cutting placing the notice of change of user in the daily Nation newspaper of 5<sup>th</sup> Sept 2022 as annex NM-3. This information was not part of the evidence presented to the court before the judgement was delivered and therefore falls short of the threshold of review on the ground of mistake or error apparent on the face of the record.
12. The second limb of the arguments as stated on the grounds on the face of the application was that the Applicant had legitimately acquired all the approvals. That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents who have not



objected to the said approvals. This argument in my view goes to the root of the decision as it questions the merit of the finding of the court on the subject. Hence form a ground of appeal and not review.

13. The Court of Appeal in the case of National Bank of Kenya Ltd versus Ndungu Njau (1997)eKLR 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.” (underline mine for emphasis).

14. Since parties are bound by their pleadings, I will not consider the application on the other heads of review provided for under order 45 as to do so would prejudice the Respondents to the current application for missing the opportunity to present on the said heads. In conclusion, i hold that there was no error or mistake on the face of the record while the grounds pleaded on the face of the application qualify to be grounds of appeal as opposed to grounds for review.

15. Thus, the motion lacks merit and it is dismissed with an order that each party meets their costs of this application.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2025**

**A. OMOLLO**

**JUDGE**

