



**Wambui & another v Mwangi (Civil Appeal (Application)  
E020 of 2021) [2025] KECA 905 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KECA 905 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL (APPLICATION) E020 OF 2021  
DK MUSINGA, M NGUGI & GV ODUNGA, JJA  
MAY 23, 2025**

**BETWEEN**

**MONICA JACKLINE WAMBUI ..... 1<sup>ST</sup> APPLICANT**

**PAULINE MUKUHI NGANGA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**LUCY WAIRIMU MWANGI ..... RESPONDENT**

*(Being an application for review of the ruling of the Court of Appeal in Civil application  
No. E020 of 2021 (Murgor, Sichale and Ole Kantai JJ.A.) delivered on 7th May, 2021)*

**RULING**

1. In an application dated 20<sup>th</sup> January 2021, the applicants sought stay of execution of the judgment of the High Court (G. Nzioka, J.) dated 18<sup>th</sup> May 2020. The applicants averred in that application that the 1<sup>st</sup> applicant was the initial original registered owner of the suit property, maisonette No. 6 Casablanca Villas, erected on L.R. No. 209/5927 which was transferred to the respondent “dubiously as I lacked the capacity to comprehend the nature of the transaction due to the depression I suffered at the time”. The applicants contended that they would be evicted from the suit property which, they alleged, was their only home, unless the Court granted the orders of stay that they sought pending the intended appeal.
2. The application was heard by this Court (Murgor, Sichale & Kantai, JJ.A.) and dismissed in the ruling dated 7<sup>th</sup> May 2021.
3. The applicants then filed the present application dated 31<sup>st</sup> May 2021. In this application, the applicants pray that the Court be pleased to recall and /or reopen the ruling delivered on 7<sup>th</sup> May 2021 dismissing their application for stay of execution. They further pray that upon recalling and/or



reopening the application, this Court be pleased to review and/ or vary the ruling and in place thereof, stay the execution of the judgment of the High Court delivered on 18<sup>th</sup> May 2020

4. The application is expressed to be brought under Article 164(3), 48, 20(3)(a)(b) and 159(2) of the Constitution, section 3 of the Appellate Jurisdiction Act, rules 1(2), 29 and 42 of the Rules of this Court, as well as section 3 of the Judicature Act.
5. In the grounds in support of the application and the affidavit of the 1<sup>st</sup> applicant, Monica Jackline Wambui, the applicants state that they have discovered new and important evidence that was not available at the time the original decision was made. They aver that this evidence is crucial as it could significantly impact the outcome of the case, warranting a reconsideration of the decision.
6. The applicants further contend that there was an error on the face of the record; that the decision contains a clear mistake or oversight that, if corrected, would lead to a different conclusion. They contend that such an error justifies the Court's intervention to ensure that justice is served.
7. It is their contention further that there was a misinterpretation or misapplication of the law in the original ruling; that the decision may have been based on an incorrect understanding of legal principles which, if properly applied, would have led to a different outcome; and that this legal flaw forms a strong basis for the request for review.
8. They contend further that the decision has resulted in significant injustice or prejudice; that it has caused undue hardship, and failing to review it would perpetuate unfairness. They contend that the review is therefore necessary to rectify the harm suffered by the applicants; that there are exceptional circumstances that justify a review; and that these circumstances are so compelling that they necessitate the court's reconsideration of the matter.
9. The application is opposed by a replying affidavit sworn by the respondent, Lucy Wairimu Mwangi, on 10<sup>th</sup> June 2021. Ms. Mwangi avers that no new and important evidence has been presented that was not available at the time of the original decision; that the applicant had ample opportunity to present all relevant materials during the initial proceedings and cannot now introduce evidence as a basis for review.
10. The respondent avers that there is no error on the face of the record; that the decision sought to be reviewed was based on sound legal reasoning and available facts; and mere dissatisfaction with the ruling does not constitute an error warranting review.
11. The respondent further avers that there was no misinterpretation or misapplication of the law; that the Court correctly applied the relevant legal principles; and that the applicant's arguments are an attempt to re-litigate the matter rather than seek a genuine review. The respondent contends that there was no injustice or prejudice suffered by the applicants, asserting that the decision was fair and justified, based on the evidence and legal framework. The applicants have not demonstrated any exceptional circumstances that would warrant a review, and she urges the Court to dismiss the application as lacking in merit and failing to meet the legal threshold for review.
12. At the hearing of the application on 19<sup>th</sup> March 2025, learned counsel, Ms. Wambui Kibicho, appeared for the applicants while learned counsel, Dr. Omondi Owino, appeared for the respondent.
13. In submissions dated 10<sup>th</sup> June 2021, the applicants contend that the ruling dated 7<sup>th</sup> May 2021 resulted in a miscarriage of justice as the Court failed to consider crucial evidence, including medical reports, witness statements, and testimony demonstrating that the 1<sup>st</sup> applicant lacked mental capacity when signing a property sale agreement in January 2009.



14. They further contend that the sale was fraudulent, facilitated by the 1<sup>st</sup> applicant's former advocate who exploited the 1<sup>st</sup> applicant while she was hospitalized. The applicants submit that the ruling meets the threshold for review under the Court's residual jurisdiction as it caused injustice, eroded public confidence in the Judiciary and cannot be appealed. They aver that eviction is imminent and that without intervention, their pending appeal may be rendered pointless. They therefore urge this Court to allow their application to prevent further injustice and restore faith in the judicial process.
15. In highlighting the applicant's submissions, Ms. Kibicho argued that the application met the threshold for review, contending that it had public policy implications arising from a fiduciary advocate-client relationship in which the client allegedly suffered from mental incapacity; an admission by the respondents acknowledging the applicant's mental health challenges at the time of the contested transaction; and the trial court's failure to properly consider critical evidence on the applicant's mental health. Ms. Kibicho noted that the matter is ongoing, with related proceedings in the High Court. She urged the Court to exercise its residual jurisdiction to allow the review and stay execution of the High Court judgment.
16. The respondent filed submissions dated 21<sup>st</sup> June 2021. She argues that the present application is an appeal disguised as a review of the ruling delivered on 7<sup>th</sup> May 2021; that it is based on updated medical reports from 2021, which are neither new nor significant and merely affirm previous reports indicating that the 1<sup>st</sup> applicant abused alcohol; and that, crucially, these documents do not demonstrate that the 1<sup>st</sup> applicant was mentally incapacitated at the time of entering the property sale agreement in January 2009.
17. The respondent submits that the application fails to meet the legal threshold for review; that it does not present new evidence previously unavailable; does not demonstrate any resulting injustice or erosion of public confidence in the Judiciary; that the trial court had already addressed and dismissed claims of the 1<sup>st</sup> applicant's mental incapacity; and that repeated reliance on these allegations for more than 12 years has caused the respondent injustice.
18. The respondent submits that courts will not entertain appeals disguised as reviews, especially when the jurisdictional threshold is unmet; that the applicants received the full purchase price for the suit property; that the property was forcefully repossessed from the respondent by the applicants; that no fraud has been proven; and that the applicant seeks to reopen a concluded matter simply due to her dissatisfaction with the decision.
19. In highlighting the respondent's submissions, Dr. Owino submitted that the applicant had not met the legal threshold for review; that there was no new or important evidence unknown at the time of the application leading to the impugned ruling; that the issue of mental capacity had already been addressed by the trial court; and that the application was an attempt to re-argue the application. Dr. Owino urged the Court to dismiss the application.
20. There is, we believe, no dispute that this Court has the inherent jurisdiction to review its own decisions to prevent injustice or abuse of the process of the court-see *Standard Chartered Financial Services Limited & 2 Others vs Manchester Outfitters (Suiting Division) Limited (Now Known As King Woollen Mills Limited & 2 Others)* [2016] eKLR in which this Court held that "...this Court is clothed with residual jurisdiction to reopen and rehear a concluded matter where the interest of justice demands."



21. In its decision in *Kamau James Gitutho & 3 others v Multiple Icd (K) Limited & another* [2019] KECA 379 (KLR), this Court held that:

“...the residual jurisdiction of this Court to re- open its own decision is exercised with caution and only in exceptional cases. It follows therefore, that this residual jurisdiction can only be set in motion once the established threshold is met. In other words, the following must be demonstrated:

1. The decision in issue has occasioned injustice or a miscarriage of justice; and
2. The said injustice or miscarriage of justice has eroded public confidence in the administration of justice; and
3. No appeal lies against the decision in issue.”

22. Having considered the application and the affidavit in support, as well as the parties’ submissions, we take the following view of the matter.

23. The ruling that the applicants seek review of was in relation to their application under rule 5(2)(b) for stay of execution of the judgment of the trial court dated 18<sup>th</sup> May 2020. In that application, as in the present application, the applicants contended that the 1<sup>st</sup> applicant, the registered owner of the suit property, lacked the mental capacity to enter into a sale agreement in respect of the property.

24. In its decision, this Court considered the facts before it and expressed itself as follows:

“In the Motion before us it is not denied that the 1<sup>st</sup> applicant was the registered owner of the maisonette in question. It is also not denied that the 1<sup>st</sup> applicant entered into an Agreement for Sale with the respondent and did, indeed, transfer the maisonette to the respondent. What the applicants are saying is that the 1<sup>st</sup> applicant lacked capacity to enter into contract because her mental function was affected by depression. This position is disputed by the respondent.

We have looked at the record of the Motion. There is indeed an Agreement for Sale entered into by the 1<sup>st</sup> applicant and the respondent on 13<sup>th</sup> January, 2009. The agreement is drawn by a law firm, Chege Wainaina & Company Advocates and an Advocate of that firm, Chege Wainaina, witnessed the signatures of both the 1<sup>st</sup> applicant and the respondent. Consideration was Ksh.13,700,000 and there is evidence of payment of that sum by cheque. We have also seen an Assignment dated 20<sup>th</sup> January, 2009 drawn and witnessed by the said law firm and lawyer, it is duly signed by the 1<sup>st</sup> applicant and the respondent; one ordinary share in Hemingway Holdings Management Limited previously owned by the 1<sup>st</sup> applicant was transferred to the respondent, and the 1<sup>st</sup> applicant further took all those steps, and thereafter wrote letters to the various authorities for water, electricity and rates informing them that she had sold the maisonette to the respondent.”

25. This Court then concluded:

“The respondent says that the 1<sup>st</sup> applicant had placed the maisonette in the market for 2 years. No credible evidence has been placed before us to show that the 1<sup>st</sup> applicant’s mental capacity was affected in any way and in those premises, we cannot discern any arguable point in the intended appeal.” (Emphasis added.)



26. The applicants appear to hinge their application for review on this conclusion by this Court. They have placed before us, in the affidavit in support of the application for review, various medical documents to support the contention that the 1<sup>st</sup> applicant suffered from a mental illness.
27. Before us is a letter dated 6<sup>th</sup> March 2009 from a Dr. Kigamwa indicating that the 1<sup>st</sup> applicant was under medical care since June, 2008 and was hospitalized over three different periods within 2008, the final discharge date being 24<sup>th</sup> September 2008. There's a letter dated 25<sup>th</sup> May 2021 from Asumbi Treatment Centre stating that the 1<sup>st</sup> applicant, who suffers from bipolar, was admitted at the facility on 10<sup>th</sup> June, 2010 till 10<sup>th</sup> October 2010, when she finished her treatment programme, and was re-admitted in March 2012 for one month. Worth noting is that all these documents were not placed before this Court in the application dated 21<sup>st</sup> January 2021, nor can they be said to have been newly discovered.
28. In its ruling, this Court noted that the 1<sup>st</sup> applicant had entered into a sale agreement with the respondent; had received the full purchase price then of Kshs. 13,000,000; had executed the sale agreement and all documents necessary to transfer the property to the respondent. She cannot, in fairness, then turn around and claim to have been suffering from mental incapacity, and, before us, try to blame her former advocates. In our view, the applicants have not satisfied the conditions for review of the decision of this Court in the ruling dated 5<sup>th</sup> May 2021.
29. The applicants have argued that there was an error apparent on the record, and that there was new evidence that was not within their custody at the time of hearing the application for stay. The documents now placed before us all date back to 2009-2012, and the document dated 25<sup>th</sup> May 2021 and one dated 20<sup>th</sup> May 2020 from Mathari National Teaching & Referral Hospital addressed to her then Advocates, Mogaka, Musyoka & Co. Advocates suggests an attempt to create evidence to support the application for review.
30. To entertain these documents would, in our view, result in precisely what an application for review seeks to guard against: to occasion injustice or a miscarriage of justice, against the respondent, and as a result, lead to erosion of public confidence in the administration of justice.
31. The application dated 31<sup>st</sup> May 2021 is totally devoid of merit, and it is hereby dismissed, with costs to the respondent.

**DATED AND DELIVERED AT NAIROBI THIS 23<sup>RD</sup> DAY OF MAY 2025.**

**D. K. MUSINGA (PRESIDENT)**

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**JUDGE OF APPEAL**

**MUMBI NGUGI**

.....

**JUDGE OF APPEAL**

**G. ODUNGA**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed



**DEPUTY REGISTRAR**

