



Gwaka Wa Utheri Mwatiria Investments Utwala Limited (Formerly Mwitikiria Investment Company) v Wachu & 3 others; Kamau & 14 others (Interested Parties) (Environmental and Land Originating Summons E010 of 2021) [2025] KEELC 809 (KLR) (26 February 2025) (Ruling)

Neutral citation: [2025] KEELC 809 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E010 OF 2021
NA MATHEKA, J
FEBRUARY 26, 2025

BETWEEN

**GWAKA WA UTHERI MWATKIRIA INVESTMENTS UTWALA LIMITED
(FORMERLY MWITIKIRIA INVESTMENT COMPANY) PLAINTIFF**

AND

GRACE WACHU 1ST DEFENDANT

ESTHER WAMBUI 2ND DEFENDANT

**DAVID NG'ANG'A (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE
OF NDINGURI KARUGIA (DECEASED)) 3RD DEFENDANT**

AND

NJOROGE HERMAN PROPOSED DEFENDANT

AND

SIMON NGIGI KAMAU INTERESTED PARTY

SAMWEL MACHIRA MUIGAI INTERESTED PARTY

FREDRICK GICHUHI NJENGA INTERESTED PARTY

JOSEPH KINUTHIA INTERESTED PARTY

ELILEEN W KINUTHIA INTERESTED PARTY

NELSON MURITU NJENGA INTERESTED PARTY

KENNETH NJENGA MUNGAI INTERESTED PARTY

SAMWEL NGUGI MUNGAI INTERESTED PARTY

HENRY NJOROGE NJONJO INTERESTED PARTY



LUKE MUCHIRA NYAGA	INTERESTED PARTY
ROBERT KUNGU MUIRURI	INTERESTED PARTY
SARAH WANJIKU KAMAU	INTERESTED PARTY
DAVID NGANGA NJENGA	INTERESTED PARTY
JANE GATHONI WANGETHA	INTERESTED PARTY
STEPHEN NJIHIA MBUGUA	INTERESTED PARTY

RULING

1. The first application is dated 4th April 2024 and is brought under Article 1 of the Constitution, Order 1 Rule 10 Order 40 Rule 2, 7, Order 51 Rule 1 of the *Civil Procedure Rules* and Sections 1A, 1B, 3A & 63E of the Civil Procedure Act seeking the following orders;
 1. That this Application be certified urgent and be heard ex parte in the first instance.
 2. That pending inter parties hearing of this application, this Honourable Court be pleased to review orders issued in the ruling dated 19th February 2024.
 3. That pending the inter parte hearing of this Application, this Honourable Court be pleased to schedule a site visit on the subject land to establish the validity of no compliance to orders as was issued by the court on 19th February, 2024.
 4. That this Honourable Court be pleased to give order that the OCS Muungano Police Station in Utawala to oversee strict compliance with orders dated 19th February, 2024.
 5. That costs of this Application be provided for.

2. It is supported by the annexed affidavit of David Ng'ang'a and is based on the following grounds that the court inadvertently failed to appreciate the different roles the court and other arms of government play. That the court's role is to interpret the law while the Executive's role is to enforce laws. That the court cannot oversight its own order hence the need to give orders directing the police to enforce and oversight the compliance of the orders granted. That the Plaintiff's agents continue to invade the land and put up permanent buildings with impunity, leaving the Defendants to watch helplessly as they cannot even access the land because members of the Plaintiff have stationed security people to bar anyone from accessing the land. That although the various court rulings have directed that parties maintain the status quo, and that no construction should go on, the Plaintiff through its alleged members have continued to develop the suit property in complete disregard of the orders. That failure by the court to grant orders compelling the OCS Muungano Police Station to ensure compliance with the orders issued has emboldened members of the Plaintiff who have continued putting up structures on the suit land with impunity. That they believe the continued construction of buildings on the suit land is a scheme to create an impression that the Plaintiff's agents have been in occupation of the land to qualify their claim on adverse possession which is not the case. That the Administrators have severally reported the invasion to the said police station but they claim they cannot stop further construction unless directed by the court. That no party in this matter will suffer prejudice if the orders being sought are granted.



3. This court has carefully considered the application and submissions therein. The Respondent submitted that the remedy of review is not available for the Applicant. In the case of *Mwiboko Housing Company Limited v Equity Building Society* (2007) 2 KLR 171 is relevant. It was held, that;

“A review could have been granted whenever the Court considered that it was necessary to correct an error or omission on its part. The error or omission must have been self-evident and should not have required an elaborate argument to be established. It would neither have been sufficient ground of review that another Court could have taken a different view of the matter nor could it have been a ground that the Court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or another provision of law could not have been a ground for review. There was no discovery of a new and important matter or evidence which after due diligence was not within the knowledge of the appellant at the time the judgment and decree was passed. There was no error apparent on the face of the record or any other sufficient reason to justify review. In the Court of Appeal decision of *Rose Kaiza v Angelo Mpanju Kaiza* 2009, the Court was categorical that;

“An application for review under order 44 Rules 1 of the Civil Procedure Rules must be clear and specific on the basis upon which it is made...”

4. Order 45, Rule 1(b) is clear that for the court to review its decision, certain requirements should be met. This section provides as follows:

“(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.

- (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.”

5. The aforesaid rule is based on section 80 of the *Civil Procedure Act*, Cap. 21 Laws of Kenya which states 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.”

6. Under Section 80 of the [Civil Procedure Act](#), the court has unfettered discretion to make such orders as it thinks fit on sufficient reason being given for review of its decision. However, this discretion should be exercised judiciously and not capriciously. In Court of Appeal, Civil Appeal No. 211 of 1996, [National Bank of Kenya v Ndungu Njau](#), the Court of Appeal 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 evidence and should not require an elaborate argument to be established. It will not be 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 proceed on an incorrect expansion of the law”.

7. The applicant stated that the court to review the orders issued on 19th February, 2024 and the status quo order dated 30th September, 2021, and issue orders that the OCS of Muungano Police Station ensures no further construction continues on the suit land pending hearing and determination of the Plaintiff's application dated 7th March, 2021. That on 26th March, 2024, they visited the suit land and found that members of the Plaintiff have continued to put up buildings on the suit land, which is total violation of the orders issued by this court on 19th February, 2024.

8. From the above provisions of the law, authorities cited and facts of this case I find that there is no apparent error or omission on the part of the court that necessitates correction and it would be premature to visit the site at this stage as the orders of the court still stand and this is not the procedure to ensure compliance of court orders. I find that this application is unmerited and is dismissed. Costs of this application to be in the cause. Parties are advised to comply with orders 11 and set the matter down for hearing.

9. The second application is dated 16th April 2024 and is brought under 16th April 2024 and is brought under Order 51 Rule 1, Order 1 Rule 1 & 10(1) of the [Civil Procedure Rules](#) and Sections 1A, 1B & 3A of the [Civil Procedure Act](#) seeking the following orders;

1. That service of this application be dispensed with in the first instance by reason of its urgency.
2. That the Honourable Court be pleased to stay further proceedings herein pending the determination of this application.
3. That the Honourable Court be pleased to order the joinder of the NJOROGHE HERMAN as a 2nd Defendant in this case.
4. That the costs of this application be in the cause.

10. It is based in the grounds that the subject matter of this suit is a cause of action on a parcel of land which is occupied by the Intended 2nd Defendant/Applicant who is Applicant herein and how also claimed by the Plaintiff and Defendant That the 2nd Defendant/Applicant is a necessary party to the fair and final determination of the issues of dispute herein. That the joinder of the 2nd Defendant/Applicant to this suit will not prejudice the rights of the Respondents herein.

11. This court has considered the application and submissions therein. The applicant desires to be joined as the 2nd Defendant/Applicant to these proceedings as the subject matter of this suit is a dispute over a parcel of land which he occupies and has built on it. That the issues disputed in this suit cannot



be determined conclusively unless the Applicant is enjoined to this suit. The plaintiff/respondent opposed the application and stated that applicant has not demonstrated any link between himself and the parties or the subject matter herein. That the photos attached are not sufficient and are inadmissible as they are not accompanied by a certificate of electronic evidence.

12. As to whether they ought to be enjoined in the suit as a defendant or an interested party, the Court is guided by Order 1 Rule 10(2) of the Civil Procedure Rules which states;

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added”.

13. The Supreme Court decision in Communications Commission of Kenya And 4 Others v Royal Media Services Limited & 7 Others Petition No. 15 OF (2014) eKLR where the Court pronounced itself on who an Interested Party is and held as follows:

“In determining whether the applicant should be admitted into these proceedings as an interested party, we are guided by this Court’s decision in the Mumo Matemo case where the court (at paragraphs 14 and 18) held:

“An interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. Similarly in the case of Meme v. Republic, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

- (i) Joinder of a person because his presence will result in the complete settlement of all the question involved in the proceedings;
- (ii) Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- (iii) Joinder to prevent a likely course of proliferated litigation.

We ask ourselves the following questions:

- a) what is the intended party’s state and relevance in the proceedings and
- b) will the intended interested party suffer any prejudice if denied joinder.?”

14. It is therefore clear that the parties who should be made parties to a suit are persons who are necessary for a complete and effectual adjudication of disputes before the court. The Applicant claims that he is in possession of part of the suit land. I find that the Applicant has interest over the suit property and ought to be enjoined. I find that no prejudice shall be suffered by the parties herein as the addition of the Applicant as a defendant to this suit is necessary and shall enable the Court to completely and effectually determine all questions involved in the suit herein in finality. For these reasons I find that this application is merited and I grant the following orders;



1. That applicant to be enjoined as a defendant in the proceedings.
2. Costs of this application to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 26TH DAY OF FEBRUARY 2025.

N.A. MATHEKA

JUDGE

