



REPUBLIC OF KENYA



**Karim HP & 12 others v Hwaok 1M & another; National Environment
Management Authority (Interested Party) (Environment & Land Petition
E027 of 2021) [2025] KEELC 703 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 703 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION E027 OF 2021
AA OMOLLO, J
FEBRUARY 20, 2025**

BETWEEN

**NABATKHANU KARIM HP 1ST PETITIONER
SHRIKESH GHEEWALA 2ND PETITIONER
KAMLESH V GOHIL 3RD PETITIONER
NAGIB POPAT 4TH PETITIONER
PIUSH PATEL 5TH PETITIONER
SHAMIT SHAH 6TH PETITIONER
NAWAZ GULAMHUSSEIN CP 7TH PETITIONER
TRUSHA PATEL 8TH PETITIONER
PANKAJ PATEL 9TH PETITIONER
SHEMZIN SHUJA D 10TH PETITIONER
HAMIDA SHUJA D 11TH PETITIONER
SUSHMA SHAH 12TH PETITIONER
NIMISH SHAH 13TH PETITIONER**

AND

**HWAOK 1M 1ST RESPONDENT
INTERNATIONAL CHRISTIAN KINDERGATEN 2ND RESPONDENT**

AND



NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY INTERESTED PARTY

RULING

1. The Respondents in the Petition are the Applicants in this Notice of motion dated 9th May 2024 filed under the provisions of section 80 of the [Civil Procedure Act](#) and order 45 of the [Civil Procedure Rules](#). It is seeking for the following orders
 - a. Spent
 - b. That this Honourable court may be pleased to review and/or vary the orders issued herein on the 11th April 2024;
 - c. Costs of this application be provided for.
2. The motion was supported by an affidavit sworn on even date by Hwaock IM and on the grounds *inter alia* that the Court had on April 11, 2024 issued an order of injunction in favor of the Petitioners/ Respondents, restraining the Applicants from continuing any construction work on the disputed property. That as a result of this order, the Applicants have been unable to complete the parking lot within their school compound and which has made it inaccessible to parents dropping off their children. This has prevented them from resuming school operations and created significant operational challenges.
3. The Applicants now seek a variation of the injunction order to allow them to complete only the cabro parking works. They argue that this application is urgent, as schools are set to resume on May 13, 2024, and the inability to operate due to an unusable parking lot will result in severe financial losses. The Applicants contend that granting the variation would not cause any injustice to the Respondents, as the requested works do not interfere with the safety or integrity of the suit property.
4. They further assure the Court of their willingness to comply with any conditions imposed to ensure justice is served. That given the Court's inherent jurisdiction to review or vary its orders, the Applicants urge that the requested relief be granted to prevent irreparable damage to their school operations while maintaining fairness to both parties.

Respondents' Replying affidavit

5. The 2nd Petitioner/Respondents filed an affidavit sworn by Shrikesh Gheewala on 4th June 2024 stating that the application is baseless, lacking merit, and an abuse of court process. Expunged. That the impugned ruling and order issued on 11th April, 2024, were made after thorough consideration of all parties' arguments, and the current application is merely an attempt to relitigate matters already decided, making it res judicata.
6. It is their contention that the Applicants are vexatiously seeking a second opportunity to challenge the decision without providing valid grounds for review or variation. Further, the 2nd Petitioner asserted that the Applicants have acted in contempt of court by continuing construction works despite the existing court orders.
7. The deponent insists that the Applicants must first purge their contempt before being granted any audience in court. In addition, they argue that no new or significant evidence has been introduced that



was unavailable at the time of the initial ruling, nor has any clear mistake or error been demonstrated to justify a review.

8. The Petitioners also stated that allowing the Applicants to continue with construction would undermine the pending appeal and cause irreparable harm to the Petitioners. Moreover, the Applicants' Environmental Impact Assessment (EIA) licenses for the infrastructural changes expired on 9th November 2023, rendering the ongoing works illegal.

Submissions

9. The Applicants filed submissions dated 10th February 2025 citing the provisions of Section 80 of the [Civil Procedure Act](#) and Order 45 Rule 1 of the [Civil Procedure Rules](#), which allow an aggrieved party to seek a review of a decree or order if no appeal has been preferred.
10. They submit that the application was brought without undue delay. It is averred that the impugned ruling had allowed the Applicants to continue with the school operations. That they are unable to resume school operations as the parking lot within the school compound are inoperable and inaccessible because of the incompleteness of the cabro works and has caused them financial losses.
11. They argue that granting the variation will not harm the Petitioners, as the cabro works do not interfere with the safe and healthy environment and emphasize that denying the application would mean the school remains non-operational until the appeal is heard, which has not yet been scheduled.
12. Citing precedents such as [Republic v Public Procurement Administrative Review Board & 2 Others](#) [2018] eKLR and [Pancras T. Swai v Kenya Breweries Ltd](#) [2014] eKLR, the Applicants assert that their case meets the criteria for review and maintain that they are not seeking to obstruct justice but rather to avoid undue hardship while ensuring compliance with the court's orders.
13. The Petitioners filed their replying submissions dated 17th February, 2025 which highlighted the facts leading to the grant of the impugned injunctive order. On the merit of the application, the Respondents discussed the meaning of sufficient cause as discussed in the relevant case law they relied upon. It is their argument that the Applicants have not demonstrated any grounds existing at the time of delivery of the ruling suggesting any ruling analogous with the grounds provided under order 45 of the [Rules](#).
14. They argue that the application is an attempt to re-open matters that were already considered and determined by the impugned ruling, i.e matters relating to construction. Further, the Respondents submit that the Applicants have come to court with unclean hands as they (Applicants) continued with construction works despite the order which necessitated the filing of the contempt application dated 28th May, 2024. That this court indeed found them guilty of contempt including laying of cabro inside the suit property. The Respondents urged the court to dismiss the application for want of merit.

Analysis and Determination:

15. I have considered the grounds relied on in support of and against the application and the submissions by the parties which have cited the relevant law and authorities thereof. The key issue for determination is whether the applicants have satisfied the grounds for review to warrant this court to exercise its power within the framework of Section 80 [Civil Procedure Act](#) (5) which sets out the power and Order 45 Rule 1(6) which gives the procedure/rules.
16. The [Rules](#) restrict the grounds for review limiting it to the grounds of discovery of new and important matter not within the knowledge of the aggrieved party after exercising due diligence; or on account of



- some mistake or error apparent on the face of the record, or for any other sufficient reason. Whatever the ground, there is a requirement that the application has to be made without un reasonable delay.
17. After analyzing the grounds stated in support of the application, I note that the ground for review is under the heading of “for any sufficient cause.” The cause being stated that the order of injunction allowed for the school operations to go on but which operations cannot happen as the works in cabro parking were incomplete. They added that the non-resumption of school is causing them financial losses and so this court should grant the application.
 18. The impugned ruling rendered by this court granted orders of injunction restraining the present Applicants from continuing with any construction works on the suit property pending hearing and determination of the pending appeal. Before the impugned ruling of 11th April, 2024, there was a subsisting order of injunction issued as far back as 26th July 2021 in favour of the Petitioners/ Respondents and which from the record appears to have been in force until the Petition was determined on 9th June, 2023. During this period, the Applicants did not seek to set aside the orders of injunction in place.
 19. However, between the date of delivery of the judgement and the date of delivery of the impugned ruling, the orders of temporary injunction had not been re-instated. Subsequently, when the injunction was given restraining the construction works, now the Applicants move the court to review them. It is my considered opinion that given the previous orders had operated as is, there is no sufficient reason shown why the Court should now vary the orders.
 20. Secondly, the impugned order on the face of it stopped construction works on the suit property. The Applicants do not plead that laying of the cabro at the parking lot is not part of a construction activity. During the hearing of the application for injunction, the Applicants wholly opposed the orders of injunction that was sought. Prayer 4 in the said application had sought discontinuation of the operation of the school and carrying out infrastructural changes on House number 49 and or the suit property.
 21. I allowed that prayer partially in terms of restraining any construction works that was going to emanate in the infrastructural changes of the said property. If there were no cabros in place, granting permission whether to complete laying them or to prevent further financial loss is equivalent to setting aside the stop works order. That is a matter which in my considered view touch on the merit of the decision and thus does not fall under a review application.
 22. The issues raised by the Petitioners that the Applicants came to court with unclean hands as they proceeded to lay the cabros despite the court order in place stating otherwise have already been dealt with in the determination on the contempt application. I will say no more about it here.
 23. In conclusion, I hold and find that the application dated 9th May 2024 is without merit. It is dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF FEBRUARY, 2025

A. OMOLLO

JUDGE

