



REPUBLIC OF KENYA



**Macharia v County Government of Nairobi (Miscellaneous Civil Application
E073 of 2024) [2025] KEELC 691 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 691 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISCELLANEOUS CIVIL APPLICATION E073 OF 2024**

TW MURIGI, J

FEBRUARY 20, 2025

BETWEEN

MARY NYAMBURA MACHARIA APPLICANT

AND

COUNTY GOVERNMENT OF NAIROBI RESPONDENT

RULING

1. Before me for determination is the Notice of Motion dated 3rd December, 2024 brought under Sections 1A, 1B, 3A and 80 of the [Civil Procedure Act](#), Order 45 Rule 1 and Order 51 of the Civil Procedure Rules in which the Applicant seeks the following orders:-
 - a. Spent.
 - b. That the Honourable Court be pleased to review the ruling of the court delivered on 30.10.2024 and/or vacate the orders made pursuant thereto and allow the Notice of Motion dated 11/04/2024.
 - c. That in the alternative the court do set aside its orders dismissing the application dated 11/4/2024 and the same be allowed as prayed.
 - d. That the costs of the application be provided for.
2. The application is premised on grounds appearing on its face together with the supporting affidavit of Mary Nyambura Macharia sworn on even date.

The Applicant's Case

3. The Applicant averred that she is aggrieved by ruling delivered by this court on 30.10.2024 and has filed a notice of appeal.



4. She further averred that the proceedings herein emanate from the judgment delivered in ELC No.555 of 2011 in which the Respondent was ordered to deposit Kshs.7 million in a joint interest earning account in the names of the Advocates of the parties. That after the Respondents failed to comply with the orders of this court, she sought to execute by filing an application for leave in ELC Misc.No.2 of 2023.
5. The Applicant contended that the facts contained in her further affidavit sworn on 9.7.2024 and annexures thereof filed pursuant to leave of this court were mistakenly/erroneously not considered by this court in its ruling dated 30.10.2024 which led to the court's erroneous findings at paragraphs 16 and 17 of the said ruling.
6. She further contended that the omission of her further affidavit by the court amounts to an error apparent on the face of the record. In conclusion, she urged the court to allow the application as prayed.

The Respondent's Case

7. The Respondent opposed the application through the replying affidavit of its acting County Attorney Christine M. Ireri sworn on 15.1.2021. She deposed that the Applicant has not pointed out any error apparent on the face of the ruling dated 30.10.2024.
8. The deponent contended that the Applicant's contention that this court erroneously failed to consider her further affidavit is a ground for appeal and not for review.
9. The application was canvassed by way of written submissions.

The Plaintiff's Submissions

10. The Plaintiff filed her submissions dated 27.1.2025. In her submissions, Counsel reiterated the contents of the affidavit in support of the application. To buttress his submissions, Counsel relied on the case of National Bank of Kenya Limited v Ndung'u Njau [1997] eKLR.

The Respondent's Submissions

11. The Respondent filed its submissions dated 3rd February 2025.
12. On its behalf, Counsel submitted that the application does not meet the threshold set out in Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules. Counsel submitted that the Applicant has not presented any new matter or evidence that was not previously available at the time when the ruling was made. Counsel further submitted that the ruling of the court does not reflect any error apparent on its face. Counsel contended that the grounds raised by the Applicant are grounds for appeal and not for review.
13. In conclusion Counsel urged the court to dismiss the application with costs.

Analysis and Determination

14. Having considered the application, the respective affidavits and the rival submissions, the only issue that arises for determination is whether this court should review the ruling delivered on 30/10/2024.
15. In the ruling at the centre of this application, the court dismissed the Applicant's application dated 11.4.2024 in which the Applicant had sought the following orders:-
 - a. That an order for mandamus ow be issued and the same be directed to the County Secretary, Nairobi city county and the Chief officer, finance/county Treasurer, Nairobi City Council.



- b. That the County Secretary, Nairobi City County and the Chief Officer, Finance/County treasurer Nairobi City County shall comply by paying 7461,632,33/= being the decretal sum costs an accrued interests in ELC 555/2011.
 - c. That County Secretary, Nairobi City County and the Chief Officer, Finance/County Treasurer Nairobi City county shall in addition pay to the Applicant further interest on the said sum of Kshs.7,461,632.33/= at the rate of 14% from the filing of this suit until payment in full.
 - d. That the default, notice to show cause do issue against the County Secretary, Nairobi City County and the Chief Officer, Finance/County treasurer, Nairobi City County for them to show cause why they should not be cited for contempt of court.
 - e. That the costs of this application be in the cause.
16. The law that governs applications for review is set out in Section 80 of the [Civil Procedure Act](#) and in Order 45 Rule 1 of the Civil Procedure Rules.

Section 80 of the [Civil Procedure Act](#) provides that: -

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.

Order 45 Rule 1 of the Civil Procedure Rules, 2010 provides that: -

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.
17. As regards the first requirement, the Applicant has not shown that there is discovery of new and important matter of evidence that she was unable to place before the court during the hearing of the application.
18. As regards the second requirement, the Applicant must establish that there is an error apparent on the face of the record. In the case of *Nyamogo & Nyamogo Vs Kogo* [2001] EA 170 the Court held that:-

“An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error



on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by a long-drawn process of reasoning or on points where there may conceivably be two opinions, can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was also possible. Mere error or wrong view is certainly no ground for a review although it may be for an appeal. This laid down principle of law is indeed applicable in the matter before us.”

19. For it to be said that there is an error apparent on the face of the record, it must be obvious and self-evident and does not require an elaborate argument to be established. The Applicant’s ground for review is that there is an error apparent on the face of the record. She contended that the court did not consider her further affidavit as shown by the remarks at paragraph 16 and 17 of the court’s ruling.
20. I have considered paragraphs 16 and 17 of the ruling dated 30.10.2024 in which the learned judge was categorical that there was no evidence of prior demand for performance annexed to the application dated 11.4.2024.
21. The record shows that on 12.6.2024, the Applicant was granted leave to file a further affidavit within 14 days. The Applicant filed a further affidavit sworn on 9.7.2024. A letter dated 22.3.2023 forwarding the draft decree to Defendant’s Counsel was annexed.
22. In its ruling however, the court did not categorically state that it did not consider the further affidavit in arriving at its decision.
23. From the foregoing, I find that the Applicant has not pin pointed the error that is apparent on the face of the record.
24. The Court is also mandated to consider if there are sufficient reasons to review the Court’s ruling. Discussing what constitutes sufficient cause for purposes of review, the Court of Appeal in the case of *The Official Receiver and Liquidator Vs Freight Forwarders Kenya Limited* [2000] eKLR stated as follows: -

“Indeed, these words only mean that the reason must be one that is sufficient to the court to which the application for review is made and they cannot without at times running counter to the interests of justice “be limited to the discovery of new and important matters or evidence, or the occurring of a mistake or error apparent on the face of the record.”
25. The Applicant has not demonstrated any sufficient reason to warrant a review of the Court’s ruling.
26. Finally, the Applicants must demonstrate that the application has been made without unreasonable delay. In the matter at hand I note that the application was filed without unreasonable delay.
27. In the end I find that the application dated December 3, 2024 is devoid of merit and the same is hereby dismissed with costs.

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HON. T. MURIGI
JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 20TH DAY OF FEBRUARY 2025.



In the presence of: -

Mr. Arum for the Applicant

Ahmed – Court Assistant

