



**Macharia v Maina & 3 others (Land Case E015 of 2024)  
[2025] KEELC 834 (KLR) (19 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 834 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA  
LAND CASE E015 OF 2024  
JM KAMAU, J  
FEBRUARY 19, 2025**

**BETWEEN**

**PATRICK NDEGWA MACHARIA ..... PLAINTIFF**

**AND**

**SAMUEL GITHINJI MAINA ..... 1<sup>ST</sup> DEFENDANT**

**COUNTY CRIMINAL INVESTIGATIONS OFFICER ..... 2<sup>ND</sup> DEFENDANT**

**NYANDARUA COUNTY ..... 3<sup>RD</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. Before me is an Application on behalf of the 1<sup>st</sup> Defendant dated 23/1/2025 by way of certificate of urgency. The same seeks the following Orders:
  - a. This Notice of Motion be certified as urgent and be heard ex parte and service thereof on the Respondents be dispensed with in the first instance owing to its urgency.
  - b. Pending the hearing and determination of this Motion, the Order dated 23/1/2025 herein issued by the Hon. Mr. Justice Mugo, granting the Plaintiff's Notice of Motion injunction Application dated 22/8/2024 in this suit be stayed.
  - c. The Order dated 23/1/2025 herein issued by the Hon. Mr. Justice Mugo, granting the Plaintiff's Notice of Motion injunction Application dated 22/8/2024 be Reviewed, vacated, and set aside in toto, and in lieu thereof of the Plaintiff's Notice of Motion dated 22/8/2024 herein filed be dismissed and the 1<sup>st</sup> Defendant's Notice of Motion dated 18<sup>th</sup> November, 2024 be granted, to preserve the subject suit property.



- d. Upon the grant of Prayer 3 above the court issues such expedient Orders on the expedited prosecution of the suit herein as may be necessary.
  - e. The costs of this Motion be awarded to the 1<sup>st</sup> Defendant/Applicant herein.
2. The Grounds upon which Motion is based are that:
1. This court has jurisdiction to Review of Orders as provided for in Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules, Section 80 allows an aggrieved litigant to apply for Review of an Order or decree and empowers the court to make such Order as it deems fit.
  2. Order 45 Rule 1 of the Civil Procedure Rules, states that the expression ‘any other sufficient reason’ ...means a reason sufficiently analogous to those specified in the rule, hence court is entitled to Review its Order of 23/1/2025 to secure the ends of justice as envisaged under Article 159(2)(a) of *the Constitution* of Kenya.
  3. The Ruling and Order of the Hon. Mr. Justice Mugo rendered online on this 23/1/2025 in granting the Plaintiff’s Motion dated 23/8/2024 while totally ignoring and not even addressing my unopposed Notice of Motion for injunction dated 18/11/2024 entitles the court to intervene on Review of its Order in furtherance of the Principle of Fairness espoused in Article 10(2)(b) of *the Constitution* of Kenya.
  4. As a matter of judicial notice and notoriety, the learned Judge Hon. Mr. Justice Mugo is new in the instant ELC court station, but apparently the documents that the 1<sup>st</sup> Defendant/Applicant had lodged in support of his Motion dated 18/12/2025 and the Orders of the Hon. Mr. Justice Angima thereon were not in the ELC court file which he was addressing, and hence he made his Ruling of January 23/1/2025 without the benefit of the said court documents lodged in the court CTS system.
  5. Indeed, following the Order of the Hon. Mr. Justice Angima on 25/11/2025 herein on the 1<sup>st</sup> Defendant’s Notice of Motion dated 18/11/2024, the parties’ 2 Motions were due for issuance of Directions on 20/1/2025:
    - a. The Plaintiff’s Motion for injunction 22/8/2024.
    - b. My (the 1<sup>st</sup> Defendant’s Notice of Motion for injunction dated 18/11/2024.
  6. Indeed the Hon. Mr. Justice Angima dealt with the 1<sup>st</sup> Defendant’s said Motion dated 18/11/2024 on 20/11/2024 as the CTS System record confirms. The Order made by the Hon. Justice Angima indicated that Directions thereon were to be issued on 20/1/2025.
  7. In furtherance of the said Directions the 1<sup>st</sup> Defendant’s Motion dated 18/11/2024 was served on the Plaintiff’s advocate as directed and yet the Plaintiff never filed any opposing documents to the 1<sup>st</sup> Defendant’s pleadings.
  8. These pleadings were served on the Plaintiff’s learned counsel on record, as evidenced by the Affidavits of Service lodged on the CTS System by the 1<sup>st</sup> Defendant’s Process Server, Mr. Duncan Wafula Oduor.
  9. The 1<sup>st</sup> Defendant’s Replying Affidavit sworn on 14/10/2024 in opposition to the Plaintiff’s injunction Motion of 22/8/2024 was filed and served yet there was no allusion in the Ruling of 23/1/2025 to the clear and uncontroverted material therein set out. This Replying Affidavit



was indeed confirmed to be on the court record as the 1<sup>st</sup> defendant and his counsel listened in on the proceedings of this 23/1/2025.

10. Also filed and served was the 1<sup>st</sup> Defendant's opposing Submissions to the Plaintiff's Notice of Motion dated 22/8/2024 which submissions are dated 21/11/2024 with the list of authorities as well dated 21/11/2024. No allusion of this was also made in the Ruling of the court of 23/1/2025.
  11. No opposition has been lodged by any party to the 1<sup>st</sup> Defendant's Notice of Motion dated 18/11/2024 and accordingly, it ought to be allowed as prayed in the Ruling rendered on this 23/1/2025 seeing that it is based on the uncontested 1<sup>st</sup> Defendant's Counterclaim duly filed and served on the Plaintiff.
  12. These are the bases of the Review Motion herein filed as the court would truly be in an embarrassing position in light of the paragraph 2 Order of 25/11/2024 of the Hon. Mr. Justice Angima while dealing with the 1<sup>st</sup> Defendant's Motion date 18/11/2024.
3. The Plaintiff responded to the Application by way of a Replying Affidavit sworn on 27/1/2025. In the said Affidavit, the Plaintiff/Respondent deponed that what the Applicant seeks is that the court sits on appeal on its own decision and explains the circumstances leading to the Ruling delivered by this court on 23/1/2025 which the Applicant seeks that it be Reviewed.
  4. I have perused the court file and particularly the proceedings of 24/8/2024 and 25/11/2024 respectively. The first one related to the Plaintiff's Application dated 22/8/2024 where the court held that there was no urgency disclosed in the said Application. The same was hence not certified urgent and was given a hearing date for 14/10/2024. The Defendants were given an opportunity to file their responses within 14 days with the Plaintiff granted leave of 10 days upon which to file and serve a further Affidavit, if need be. Parties did comply and even filed written submissions. Apparently, the court did not sit on 14/10/2024. The matter came up next for hearing on 25/11/2024. Before the matter was mentioned in court, the 1<sup>st</sup> Defendant had already filed an Application for injunction under Certificate of Urgency. The same is dated 18/11/2024 and filed on 19/11/2024. The Application sought the following Orders:
    1. This Notice of Motion be certified as urgent and be heard ex parte and service thereof on the Respondents be dispensed with in the first instance owing to its extreme urgency.
    2. A temporary injunction do issue, pending the hearing and determination of this Motion, restraining the Plaintiff herein Patrick Ndegwa Macharia as well as the Respondents herein, by themselves, their servants and/or agents, emissaries, or otherwise howsoever from entering, trespassing, remaining upon, occupying, cultivating, fencing, ploughing, grazing upon, leasing, licensing, subdividing, letting for a peppercorn fee, depositing any construction materials, constructing upon, further constructing upon, carrying on any form of business, or otherwise howsoever dealing in the parcel known as Land Reference 7675, I.R.8682, or any part thereof.
    3. An injunction do issue, pending the hearing and determination of the suit herein restraining the Plaintiff herein Patrick Ndegwa Macharia as well as the Respondents herein, by themselves, their servants and/or agents, emissaries, or otherwise howsoever from entering, trespassing, remaining upon, occupying, cultivating, fencing, ploughing, grazing upon, leasing, licensing, subdividing, letting for a peppercorn fee, depositing any construction materials, constructing upon, further constructing upon, carrying on any form of business, or otherwise howsoever dealing in the parcel known as Land Reference 7675, I.R. 8682, or any part thereof.



4. The Officer Commanding Ndaragwa Police Station, Nyandarua County, do oversee the strict enforcement and observance of the Orders herein issued.
  5. The costs of this Motion be to the Counterclaimant/Applicant in any event.
4. The court was urged to have both the earlier Application dated 23/8/2024 and the latter dated 18/11/2024 about 3 months apart heard contemporaneously. By then the written submissions for the former had already been filed and exchanged. The court declined to give Directions in respect to the 1<sup>st</sup> Defendant's Application dated 18/11/2024 and did make the following Directions thereof:
1. There is no urgency in the said Application hence it is not certified urgent.
  2. The said Application shall– be served upon all concerned parties for Directions on 20/1/2025 in view of the pendency of a similar Application for interim Orders by the Plaintiff.”
- And in respect to the Plaintiff's Application dated 22/8/2024 the court directed that:
3. In the meantime, the parties shall comply with the Directions given on 14/10/2024 on the hearing of the Plaintiff's Application for interim Orders.”
5. What were the Directions of 14/10/2024?
1. The parties shall file and serve and exchange respective submissions within 14 days with the Plaintiff taking 10 days and the 1<sup>st</sup> Defendant 2 days.
  2. The Plaintiff shall be at liberty to file further Affidavit if necessary within 3 days upon service of the Replying Affidavit.
  3. Mention on 25/11/2024 to confirm compliance and fix a Ruling date.
6. A literal meaning of the above respective Directions was that on 20/1/2025 the court was to do the following:
1. Fix a Ruling date for the Plaintiff's Application dated 22/8/2024.
  2. Give Directions for the 1<sup>st</sup> Defendant's Application dated 18/11/2024.
7. There were no Orders or Directions that the 2 Applications should be heard contemporaneously. The court did not even say that it was going to hear any of the Applications. It only gave explicit Directions that it was going to give a Ruling date for the former and give Directions as to the hearing of the latter. On 20/1/2025 the court gave a Ruling date for the Application dated 22/8/2024 which was to be 23/1/2025 on which date the Court was going to give Directions for the 1<sup>st</sup> Defendant's Application dated 18/11/2024.
8. This is what has aggrieved the 1<sup>st</sup> Defendant over which he seeks a Review of the court's Ruling dated and delivered in open court on 23/1/2025. To begin with, the 2 Applications are separate and distinct and the court has already heard the Application dated 22/8/2024 by the Plaintiff. The same was heard and a Ruling date given by the court as had been directed by his Lordship, Justice Angima. There are no good Grounds given by the 1<sup>st</sup> Defendant to Review it, vacate the same and/or set the Orders therein aside. The court cannot Review the Order because the 1<sup>st</sup> Defendant's Application dated 18/11/2024 was not heard contemporaneously with it. In any case if any Order ought to have been questioned by the 1<sup>st</sup> Defendant, it is the Order of 25/11/2024 that the 1<sup>st</sup> Defendant's Application dated 18/11/2024 was not urgent and the same had to have Directions given on 20/1/2025. The 1<sup>st</sup> Defendant's accusation that the court totally ignored and refused to address his Notice of Motion



for injunction dated 18/11/2024 is not true because it was not scheduled to be heard on 20/1/2025. Whether opposed or not opposed. The Honourable Justice Angima was so clear on what to do with the said Application on 20/1/2025 – to give Directions on the same. But as for the Plaintiffs’ Application dated 22/8/2024 the court was to give a Ruling date. Nothing would have been so difficult in saying that the court will either hear both Applications on 20/1/2025, give Directions or give a Ruling date for both. And in order to be clearer, the court referred to its Directions of 14/10/2024 “on the hearing of the Plaintiffs’ Application for interim Orders” to the effect that it was a date to confirm compliance and fix a Ruling date. By this time the 1<sup>st</sup> Defendant’s Application had not been filed. I am not persuaded by the 1<sup>st</sup> Defendant’s argument that because his Application had not been opposed, the court ought to have granted it in the Ruling of 23/1/2025 and in any case before Directions for the same had been made. It was not set for consideration at all. It had to wait for its day for consideration. I do not also agree with the 1<sup>st</sup> Defendant that in my Ruling of 23/1/2025 I needed to look at the 1<sup>st</sup> Defendant’s Notice of Motion dated 18/11/2025 but should the Applicant be right on this issue which in my view he is not, then this is an issue for Appeal and not Review. His assertion that his right to a fair trial were abridged is a matter of Appeal and I cannot sit on appeal against my own Decision. And nowhere in the Ruling dated 23/1/2025 did the court give an Order of status quo.

9. The law on Review is provided for under Section 80 of the [Civil Procedure Act](#) Cap 21 Laws of Kenya provides 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.”

10. The procedure and regulations for the Review are provided for under Order 45 Rule 1 of the Civil Procedure Rules, 2010 as follows: -

1.

(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.”

11. In *Republic v Public Procurement Administrative Review Board & 2 others* [2018] eKLR it was held: -

Section 80 gives the power of review and Order 45 sets out the rules. The rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review limiting it to the following grounds; (a) discovery of new and important matter or evidence which after



the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or; (b) on account of some mistake or error apparent on the face of the record, or (c) for any other sufficient reason and whatever the ground there is a requirement that the Application has to be made without unreasonable delay.”

12. In *Pancras T. Swai v Kenya Breweries Limited* [2014] eKLR the Court of Appeal held: -

Order 44 rule 1 (now Order 45 rule 1 in the 2010 Civil Procedure Rules) gave the trial Court discretionary power to allow review on the three limbs therein stated or “for any sufficient reason.....”

13. Discussing the scope of Review, the Supreme Court of India in the case of *Ajit Kumar Rath vs State of Orisa & Others*, 9 Supreme Court Cases 596 at Page 608. had this to say:-

the power can be exercised on the Application of a person on 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 order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for stabling it. It may be pointed out that the expression “any other sufficient reason” ..... means a reason sufficiently analogous to those specified in the rule”

14. In *Tokesi Mambili and others vs Simion Litsanga* the Court held as follows: -

- i. In order to obtain a review an applicant has to show to the satisfaction of the court that there has been discovery of new and important matter or evidence which was not within his knowledge or could not be produced at the time when the order to be reviewed was made. An applicant may have to show that there was a mistake or error apparent on the face of the record or for any other sufficient reason.
- ii. Where the Application is based on sufficient reason it is for the Court to exercise its discretion.

15. In *Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya* [2019] eKLR High Court of Kenya Nairobi Judicial Review Division Misc. Application No. 317 of 2018 John M. Mativo Judge culled out the following principles from a number of authorities: -

- i. A court can review its decision on either of the grounds enumerated in Order 45 Rule 1 and not otherwise.
- ii. The expression “any other sufficient reason” appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds.
- iii. An error which is not self-evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of record justifying exercise of power under Section 80.
- iv. An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
- v. A decision/order cannot be reviewed under Section 80 on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.



- vi. While considering an Application for review, the court must confine its adjudication with reference to material, which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/ decision as vitiated by an error apparent.
  - vii. Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/ tribunal earlier.
  - viii. A mistake or an error apparent on the face of the record means a mistake or an error, which is prima-facie visible and does not require any detail examination. In the present case the petitioner has not been able to point out any error apparent on the face of the record.
  - ix. Section 80 of the Civil Procedure Code provides for a substantive power of review by a civil court and consequently by the appellate courts. The words occurring in Section 80 mean subject to such conditions and limitations as may be prescribed thereof and for the said purpose, the procedural conditions contained in Order 45 Rule 1 must be taken into consideration. Section 80 of the Civil Procedure Code does not prescribe any limitation on the power of the court, but such limitations have been provided for in Order 45 Rule 1.
  - x. The power of a civil court to review its judgment/decision is traceable in Section 80 CPC. The grounds on which review can be sought are enumerated in Order 45 Rule 1.
16. The case here is not one of discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the 1<sup>st</sup> Defendant’s knowledge.
17. A mistake or an error apparent on the face of the record means a mistake or an error, which is prima-facie visible and does not require any detailed examination. In the present case the Applicant has not been able to point out any error apparent on the face of the record.
18. The Application could also not pass the Test of:
- .....or for any other sufficient reason.....”
- which reasons leading authorities hold must be analogous to the other grounds mentioned under the Act and Rules, a reason sufficiently analogous to those specified in the Rule”
19. In the case of *Evan Bwire V Andrew Aginda Civil Appeal No. 147 of 2006* cited in the case of *Stephen Githua Kimani V Nancy Wanjira Waruingi T/A Providence Auctioneers (2016) eKLR* the Court of Appeal held as follows:
- An Application for review will only be allowed on strong grounds particularly if its effect will amount to re-opening the Application or case afresh. In other words, I find no material before me to demonstrate that the applicant has demonstrated the existence of new evidence which he could not get even after exercising due diligence.”
20. The current Application falls under the above category. The effect of allowing it would amount to re-opening the case afresh. Litigation must come to an end. This is not what was envisaged by Section 80 of the *Civil Procedure Act* nor the Rules under Order 45 of the Civil Procedure Rules.
21. Finally, the Application is irregularly in Court since an Applicant in an Application for Review ought to have annexed a formal extracted Decree or order in respect of which the review is sought.



22. In the case of Suleiman Murunga V Nilestar Holdings Limited & Another (2015) eKLR the court held as follows:

The plain reading of the above provision (referring to Order 45 Rule 1) is that an applicant for review ought to have annexed a formal extracted decree or order in respect of which the review is sought. In essence, judgment or ruling. Thus, where an applicant fails to annex the order sought to be reviewed, an Application is defective. In the present Application the order that the Defendants sought to be reviewed was not annexed with the result that the Defendant's Application was fatally defective. I agree that a formal decree or order is a pre-requisite before an applicant can bring himself/herself within the ambit of order 45 of the Civil Procedure Rules as relates to review of the decree or order”

23. No such a Ruling/Order was attached to the present Application which makes the Application fatally defective.
24. Having said so, I dismiss the Defendant's/Applicant's Application dated 23/1/2025 with costs.

**RULING DATED, SIGNED AND DELIVERED AT NYANDARUA THIS 19<sup>TH</sup> DAY OF FEBRUARY 2025.**

**MUGO KAMAU**

**JUDGE**

In the Presence of: -

Court Assistant: Eric.

Mr. Ikua for the Plaintiff

Mr. Kinyanjui for the 1<sup>st</sup> Defendant

Ms. Wanjeri holding brief for Mr. Rotich for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants

