



**Pansiba Limited v Abdi & 9 others (Environment & Land Case
E194 of 2023) [2024] KEELC 13445 (KLR) (20 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13445 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E194 OF 2023
OA ANGOTE, J
NOVEMBER 20, 2024**

BETWEEN

PANSIBA LIMITED PLAINTIFF

AND

AHMED NAZIL ALIAS ABDI 1ST DEFENDANT

MIDLAND INVESTMENTS (KSM) LTD 2ND DEFENDANT

PRIME BANK LIMITED 3RD DEFENDANT

PALM OIL TRANSPORTERS LIMITED 4TH DEFENDANT

DIAMOND TRUST BANK LIMITED 5TH DEFENDANT

STANBIC BANK (K) LTD 6TH DEFENDANT

GEOMETRIC SERVICES LTD 7TH DEFENDANT

THE DIRECTOR OF SURVEY KENYA 8TH DEFENDANT

THE CHIEF LAND REGISTRAR 9TH DEFENDANT

THE ATTORNEY GENERAL 10TH DEFENDANT

RULING

1. The Plaintiff has filed a Notice of Motion application dated 3rd October 2024, under Order 45 Rule 51 of the Civil Procedure Rules and Sections 1A, 1B, 3 7 3A of the *Civil Procedure Act*. The Plaintiff has sought for the following orders:
 - a. That the Honourable Court be pleased to review the orders of the court issued on 3rd October 2024 and also allow the Plaintiff to remain upon and retain possession of a small section of



Land Parcel Numbers L.R. 209/10847 and LR No. 209/10847 (Also referred to as LR No . 16791 by the Defendants) pending the hearing and determination of this suit.

- b. That costs of this application be in the cause.
2. The grounds of the application, as set out on the face of the Motion and in the Supporting Affidavit sworn by Manjit Singh Sethi, the Plaintiff's Director, are that this court, in its ruling of 3rd October 2024, ordered the Plaintiff to hand over possession of the suit properties, LR No. 209/10846 and LR No. 209/10847 to the 2nd Defendant through the 3rd Defendant's Administrator to continue using the same for administration purposes.
 3. The deponent denied ever evicting or interfering with the possession of a section of the suit property by the 3rd Defendant's Administrator, and asserted that the latter was still in possession of the same to date, as well as the scrap trucks and motor vehicles.
 4. The Plaintiff's Director deposed that the Plaintiff is only occupying a section of the suit property where it has its machinery and cabro production facility and that the Plaintiff and the 3rd Defendant's agent have continued to occupy their respective sections of the suit property, side by side since the issuance of the order of 27th September 2023 issued by Lady Justice Mogeni and that the 2nd Defendant's tenants vacated willingly after site visit by the Deputy Registrar.
 5. It was deposed by the Plaintiff's Director that the suit property measures two acres, which is large enough to accommodate both the Plaintiff and the Administrator and that this mix up of facts constitutes an error on the face of the record, which is glaring and can be rectified by this court reviewing its order, and allowing the Plaintiff and the Defendant to continue occupying or residing on both parcels of land side by side, pending hearing and determination of the suit.
 6. Manjit Singh argued that no prejudice will be suffered by the 2nd and 3rd Defendants or the Administrator, as they have had the use and occupation of half of the suit parcels, which is enough for their operations of storing scrap motor vehicles, and that the Plaintiff stands to suffer immense loss and costs if it is to move out of the suit property as its production machinery and materials are heavy and require time, costs and expenses to move.
 7. He deposed that the Plaintiff indirectly employs hundreds of other workers by procuring materials from quarries, cement factories, chemical companies, logistics and transport who collect and lay paving blocks, who will be rendered jobless if the Plaintiff is to cease operations and close down.
 8. It is the Plaintiff's case that the 2nd Defendant ceased operations long ago and is bankrupt and under the administration of the 3rd Defendant's agent, which has no operations on the land other than storing scrap motor vehicles on a section of the land.
 9. He asserted that the Administrator and Total Security Company Limited have always had access to the suit property. Further, that in Milimani HCCOMIN Case No. E008 of 2019 -Ponangipalli Wnkata Ramana Rao (Administrator of Midland Hauliers Limited) vs Jayesh P. Kotecha & Pansiba Limited, the administrators admitted that the suit property is not one of the properties to be realized as security and he therefore does not need to use the suit property.
 10. Manjit Singh Sethi additionally deposed that there are new developments that warrant a review of this court's orders: that the 1st Defendant has been charged with forgery in Milimani Criminal Case No/ E560 of 2024 Republic v Abdirahman Muhamed Abdi Alias Abdi, and that the 1st Defendant breached two court orders by Hon. R.N. Kimingi and Hon. N. Kaikai in forcefully occupying a section of the suit property and later on inviting the Defendants thereon.



11. He argues that this court had no knowledge of the charging of the 1st Defendant and the fact that the 2nd and 4th Defendants' titles have been impugned by the investigative agencies and found to be fraudulent.
12. The 2nd Defendant opposed the application vide a Replying Affidavit sworn by its Director, Jayesh Kotecha and a Supplementary Affidavit sworn by its advocate, Kelvin Mogeni. He deponed that the orders of this court issued on 3rd October 2024 were against the backdrop of the Plaintiff's gross disregard for the court orders in using temporary prohibitory orders to unlawfully evict the 2nd Defendant and take possession of the suit property.
13. Jayesh Kotecha deponed that the Plaintiff has misled this court in stating that it never evicted the 2nd Defendant's tenants yet the Plaintiff admitted in evidence that they forcibly evicted the 2nd Defendant and that there is no mix up of facts and what is required is compliance, not review.
14. Jayesh Kotecha argued that the Plaintiff's application is asking this court not to review its orders, but to fundamentally change the substance of its ruling where there is no error apparent on the face of the record; that this is essentially an appeal disguised as an application for review, and that this application does not meet the requirement for review set out under Order 45 Rule 1 of the Civil Procedure Rules.
15. In the Supplementary Affidavit, the Plaintiff's advocate deponed that he represented the 2nd Defendant in Insolvency Petition proceedings in HCCOMIN No. 8 of 2018 (In the matter of Midland Hauliers Ltd); that as part of the insolvency proceedings, he accompanied the Deputy Registrar, Hon. Opande to the suit premises occupied by Midland Hauliers Ltd (Under Administration) and Nine Trading Limited as the 2nd Defendant's licensees and that the Deputy Registrar prepared a report of the site visit and took photographs of the suit property, which photographs show that the Plaintiff was not in occupation.
16. The 3rd Defendant opposed the application vide a Notice of Preliminary Objection dated 17th October 2024 and a Replying Affidavit sworn by the 3rd Defendant's Senior Legal Manager, George Mathui, dated 23rd October 2024.
17. The 3rd Defendant averred that the Plaintiff is guilty of the illegality of forcible entry under Section 90 of the Penal Code and has no audience to seek any equitable or legal relief; that the Plaintiff's directors have on diverse occasions sworn false affidavits and fabricated evidence contrary to Section 112, 113 and 115 of the Penal Code; and that Mr. Manjit Sethi Singh continues to unabatedly commit acts of perjury by falsely asserting that the Plaintiff has been in occupation of the suit property since the filing of this suit.
18. In his Replying Affidavit, George Mathui deponed that on 9th October 2023, the 3rd Defendant's advocates gave formal notice to the Plaintiff's advocates to inform their client to vacate the suit premises by close of business on 11th October 2024; that on 11th October 2024, MR. PVR Rao, the insolvency practitioner took possession of the property; that on 16th October 2024, Mr Rao informed the 3rd Defendant's advocates that the Plaintiff had sent goons who broke the locks to the gate; that Total Security Surveillance also informed him of the Plaintiff's interference and that they reported the issue of malicious damage to property to the police.
19. George Mathui deponed that Manjit Singh Sethi continues to unabatedly commit acts of perjury by asserting that the Plaintiff has been in possession of the property and that in the Supporting Affidavit dated 13th September 2023, the Plaintiff's director deponed that the Plaintiff evicted the security guards, forcibly removed all vehicles on 2nd September 2023 and begun construction on the suit property.



20. It was deponed that in the 3rd Defendant's Further Affidavit dated 26th September, the past site visit in Insolvency No. E008 of 2019 confirmed that the Plaintiff was never at any time in occupation of the suit premises; that in the 3rd Defendant's Further Affidavit dated 26th September, the insolvency practitioner averred that he has been in possession of the suit premises since 2020 and the Plaintiff was never in occupation and that the google maps for 2020-2023 show that there was no evidence that the Plaintiff was in occupation.
21. The deponent argued that the Plaintiff has polluted the waters of equity and cannot now seek to remain on the suit premises after gaining forcible entry, building and installing machinery to create a false impression that it has been in occupation of the property for years. He additionally asserted that no grounds for review had been set out to support the application as no mistake or error of law have been made out. Parties made submissions which I have considered.

Analysis and Determination

22. This is an application for review of this court's ruling dated 3rd October 2024. It has been made under Section 80 of the [Civil Procedure Act](#) Cap 21, which 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.”

23. Similarly, Order 45 Rule 1 of the Civil Procedure Rules, 2010 provides that:

“ 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.”

24. Based on these provisions, there are three grounds which a party may prove to be granted orders of review: (a) discovery of new and important evidence which was not within the knowledge of the



applicant or could not be produced at the time the orders were passed; (b) on account of a mistake or error apparent on the face of the record or (c) for any other sufficient reason. This was upheld in Republic vs Public Procurement Administrative Review Board & 2 others [2018] eKLR as follows:

“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.”

25. The Plaintiff has asserted that there is an error on the face of the record, as there is a mix up facts. The Plaintiff denied ever evicting or interfering with the possession of a section of the suit property by the 3rd Defendant’s Administrator, who the Plaintiff asserts is still in possession of the same to date, as well as the scrap trucks and motor vehicles.

26. According to the Plaintiff’s director, the Plaintiff and the 3rd Defendant’s Administrator have been in occupation of the suit property side by side since 2023 and that the suit property measures two acres, which is large enough to accommodate both the Plaintiff and the Administrator.

27. In *Muyodi vs. Industrial and Commercial Development Corporation & Another* [2006] 1 EA 243, the Court of Appeal described an error apparent on the face of the record as follows:

“In *Nyamogo & Nyamogo -vs- Kogo* (2001) EA 174 this Court said 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 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 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 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.”

28. An error on the face of the record does not require detailed examination or elucidation of facts or legal position. This was the position that was taken in *Alvin Mbae & 2 Others vs Edwin Nyaga Mukatha & 2 Others* [2022] eKLR:

“The term “mistake or error apparent” by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 45 Rule 1 of the Civil Procedure Rules and Section 80 of the Act. Put differently, an order, decision, or judgment



cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.”

29. On the basis of these definitions, it is clear that what the Plaintiff claims to be an error on the face of the record, are the facts regarding the context under which the Plaintiff entered and continues to be in possession of the suit property. The explanation by the Plaintiff is not self-evident, considering that is the very issue that this court determined in the impugned Judgment.
30. The current application is an invitation to this court to sit in appeal of its own judgement, which it cannot and will not do. The Plaintiff has consequently failed to prove that there is an error on the face of the record. This court reiterates its earlier position, that the Plaintiff took possession of what he calls a small portion of the suit land after obtaining an ex parte order of this court, and not earlier.
31. If the Plaintiff’s view is that the court was wrong on that aspect, then it should move the Court of Appeal to have that order overturned. However, until that happens, the Plaintiff should comply with those orders.
32. The Plaintiff has additionally claimed that there are new developments that warrant a review of this court’s orders. These are that the 1st Defendant has been charged with forgery in Milimani Criminal Case No/ E560 of 2024 Republic vs Abdirahman Muhamed Abdi Alias Abdi, and that the 1st Defendant breached two court orders by Hon. R.N. Kimingi and Hon. N. Kaikai.
33. The question that arises is whether the Plaintiff had knowledge of these “new” developments at the time of filing and hearing of the injunction application, which was the subject of the ruling against which the Plaintiff has sought review.
34. The Plaintiff’s injunction application is dated 23rd May 2023. The Plaintiff has attached a charge sheet dated 30th May 2024 which indicates that the 1st Defendant, Abdirahman Muhumed Abdi was charged with multiple counts of fraud including fraudulently amalgamating the two parcels of land herein, forging a title document contrary to Section 351 of the Penal Code and making false documents contrary to Section 347(a) as read with Section 349 of the Penal Code.
35. The Plaintiff’s advocate was verily aware of these new facts as at 31st May 2024. However, the Plaintiff and its advocates failed to highlight these developments when the application for injunction came up for hearing on 22nd July 2024. It is clear that these developments were well within the knowledge of the Plaintiff when the application came up for hearing.
36. The Plaintiff has also claimed that the 1st Defendant is in breach of temporary injunction orders issued by Hon. R.N. Kimingi and Hon. N. Kaikai, restraining the 1st Defendant from trespassing or dealing with the suit properties in any way. The Plaintiff has annexed a copy of an order issued by Hon. M. Kaikai dated 27th July 2005 as well as a further order issued by Hon. R.N. Kimingi on 8th September 2005.
37. The Plaintiff has not indicated when it became aware of the existence of these orders, nor has it stated why it was prevented from bringing these orders to this court’s attention at the point of filing and during the hearing of the injunction application. On this basis, this court must find that the Plaintiff has not established this ground for review.
38. Having found that the Plaintiff has not presented any cogent grounds for this court to review its ruling dated 3rd October 2024, this court dismisses the Plaintiff’s application for review for lack of merit.



39. Costs of this application shall be borne by the Plaintiff.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 20TH DAY OF NOVEMBER, 2024.

O. A. ANGOTE

JUDGE

In the presence of;

Mr. Musundi for Plaintiff/Applicant

No appearance for Respondents/Defendants

Court Assistant - Tracy

