



REPUBLIC OF KENYA



Gikonyo v Housing Finance Company Of Kenya Ltd & 2 others (Civil Suit 672 of 2006) [2025] KEHC 7511 (KLR) (Commercial and Tax) (30 May 2025) (Ruling)

Neutral citation: [2025] KEHC 7511 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT 672 OF 2006
FG MUGAMBI, J
MAY 30, 2025**

BETWEEN

NANCY ELIZA MUTHONI GIKONYO PLAINTIFF

AND

HOUSING FINANCE COMPANY OF KENYA LTD 1ST DEFENDANT

RUPINDER SINGH SEMI 2ND DEFENDANT

LIFELINE TRADERS 3RD DEFENDANT

RULING

1. Before Court is the application dated 30th July 2024 brought under Order 42, Order 45 Rule 1(1) and Order 51 Rule 1 of the Civil Procedure Rules, Sections 1A, 1B, 3A, 99 and 100 of the [Civil Procedure Act](#) and Article 159 of [the Constitution](#) of Kenya.
2. The application seeks the following orders:
 - i. Review and/or variation of the judgment delivered on 19th July 2024 by correcting an error in the description of the suit property, specifically amending the reference from L.R. Nairobi 77851/311-Runda to L.R. Nairobi 7785/311-Runda.
 - ii. An order vesting possession and ownership of the said suit property in the plaintiff, or in the alternative, compelling the 1st defendant to compensate the plaintiff at the current market value of the property.
 - iii. Review and/or variation of the stay of execution order granted to the 1st defendant on 19th July 2024, by imposing a condition requiring the 1st defendant to deposit security for the due performance of the judgment pending the hearing and determination of the intended appeal.



- iv. Costs of the application.
3. The application is supported by the grounds on its face, the supporting and supplementary affidavits sworn on 30th July and 16th September 2024, by Nancy Eliza Muthoni Gikonyo and is further buttressed by written submissions dated 16th September 2024.
 4. The applicant contends that the judgment delivered by this Court on 19th July 2024 declared the sale and transfer of the suit property by the 1st and 2nd defendants to be unlawful. She argues that the Court ought to have gone further and either vested ownership of the suit property in her or awarded compensation at its current market value. The applicant reiterates that the Court failed to address her alternative prayer for compensation or to give express directions on the reversion of ownership and possession of the suit property. She claims that the omission has left the issue of ownership unsettled and the judgment incomplete.
 5. She also asserts that the 30-day stay of execution granted was unconditional and has since lapsed, on or about 19th August 2024, creating the risk of the 1st defendant obtaining further stay orders from the Court of Appeal without furnishing security. She further argues that the 1st defendant is attempting to avoid compliance with Order 42 Rule 6 by relying on the earlier unconditional stay and pursuing a further stay before the Court of Appeal without offering any security. She argues that unless the High Court imposes conditions retrospectively or through review, she risks suffering prejudice and injustice, especially considering delays at the Court of Appeal.
 6. She submits that the grounds constitute an error apparent on the face of the record and that rectifying the same would not prejudice any party. She further maintains that the application has been filed without delay and raises legitimate grounds for review in the interest of justice.
 7. The application is opposed by the 1st respondent through a replying affidavit sworn by Regina K. Anyika on 20th September 2024 which is further buttressed by the submissions dated 29th November 2024. The 1st respondent contends that the application does not meet the legal threshold for review, as the applicant has not demonstrated discovery of new evidence, error apparent on the face of the record, or any sufficient reason to justify review.
 8. The 1st respondent argues that the issue of ownership was conclusively determined by earlier rulings in 2017, 2019 and the judgment of 19th July, 2024, which upheld the validity of the sale and extinguished the applicant's proprietary rights. The 1st respondent urges that any further orders regarding ownership would adversely affect third parties who are not party to the suit. She also contends that the prayer for current market value compensation amounts to re-litigation of a claim that was already determined, given the award of Kshs. 7 million in refund and Kshs. 3 million in damages. It is further argued that the applicant is improperly seeking to appeal under the guise of review.
 9. The 1st respondent maintains that the applicant's request for correction of the title number is inconsequential and does not change the substance of the findings.
 10. Regarding the issue of stay of execution, the respondent adds that the Court of Appeal has already stayed execution of that judgment on condition that a bank guarantee of Kshs. 7 million be provided.

Analysis and Determination

11. I have carefully considered the application, the respective affidavits, and the parties' submissions. The main issue for determination is whether the applicants' have met the threshold for review as set out under Section 80 of the [Civil Procedure Act](#) and Order 45 Rule 1 of the Civil Procedure Rules. These



provisions are in pari materia and empower the Court to review its own decisions on limited grounds, including:

- a. Discovery of new and important matter or evidence which, after due diligence, was not within the applicant's knowledge or could not be produced at the time;
 - b. Error apparent on the face of the record;
 - c. Any other sufficient reason.
12. The applicant, relying on the ground that there exists an error apparent on the face of the record seeks review on three grounds:
- a. Correction of a typographical error in the description of the suit property;
 - b. Clarification or modification of the judgment to vest ownership of the suit property in her or, alternatively, to award current market value compensation;
 - c. variation of the stay of execution to require the 1st defendant to furnish security.
13. On the first issue, it is evident from the certificate of title that the correct land reference number for the suit property is L.R. Nairobi 7785/311-Runda. The reference to L.R. Nairobi 77851/311-Runda as pleaded in the 2nd further amended plaint and subsequently stated in the judgment is therefore a clerical error. Under Section 99 of the *Civil Procedure Act* and Order 45 Rule 1, the Court is empowered to correct such errors. The correction does not affect the substance of the judgment and no party stands to suffer prejudice from it. This limb of the application is therefore meritorious.
14. On the second issue, the applicant argues that the Court failed to grant a substantive remedy in the form of vesting ownership or awarding current market value compensation. Upon reviewing the judgment, I note that the Court made a clear award of Kshs. 7 million as a refund of the purchase price and an additional Kshs. 3 million in general damages. The Court thus provided what it considered appropriate relief. The applicant now seeks to re-open that issue and introduce a new remedy, which is not permissible under the rubric of review.
15. As was stated in *National Bank of Kenya Ltd v Ndungu Njau* [1997] eKLR, a review cannot be used as a substitute for an appeal. Reiterating this point, the Court of Appeal noted:
- “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-evident and should not require an elaborate argument to be established. It will not be a 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 proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.”
16. In my considered view, the issue raised by the applicant amounts to an invitation to the Court to revisit and re-evaluate its interpretation of the law and assessment of the facts. This challenge goes to the merits of the decision rather than to any error apparent on the face of the record or other permissible ground for review. As such, it falls outside the scope of review under the applicable legal framework and is accordingly without merit.
17. With respect to the third issue, the applicant takes issue with the unconditional stay of execution granted by the Court on 19th July 2024. It is true that under Order 42 Rule 6(2) of the Civil Procedure Rules, the Court is empowered to impose conditions for stay, including the provision of security.



However, both the decision to grant a stay and the terms attached to it fall squarely within the discretion of the Court. In this case, the omission to require security does not, in my view, amount to an error apparent on the face of the record so as to warrant review.

18. In any event, it is evident that the Court of Appeal has since considered an application for stay of execution and issued further directions, including the requirement for a bank guarantee. This development renders the prayer before this Court moot. The appropriate forum for any further relief or variation on this issue now lies with the appellate court.

Disposition and final orders

19. Accordingly, the application dated 30th July 2024 partly succeeds and the court makes the following orders:
 - a. The prayer seeking correction of the land reference number from L.R. Nairobi 77851/311-Runda to L.R. Nairobi 7785/311-Runda is allowed. The judgment of 19th July 2024 is accordingly corrected to reflect this amendment, pursuant to Section 99 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules.
 - b. All the remaining prayers are declined.
 - c. Each party shall bear its own costs of this application.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 30TH DAY OF MAY 2025.

F. MUGAMBI

JUDGE

