



**Group Twenty Seven Investment Co Ltd v Kiambu Dandora Farmers Co Ltd & 3 others (Civil Suit 61 of 2019) [2023] KEELC 791 (KLR) (14 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 791 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
CIVIL SUIT 61 OF 2019  
JA MOGENI, J  
FEBRUARY 14, 2023**

**BETWEEN**

**GROUP TWENTY SEVEN INVESTMENT CO LTD ..... PLAINTIFF**

**AND**

**KIAMBU DANDORA FARMERS CO LTD ..... 1<sup>ST</sup> DEFENDANT**

**MINISTRY OF INTERIOR AND NATIONAL CO-ORDINATION .... 2<sup>ND</sup>  
DEFENDANT**

**INSPECTOR GENERAL OF POLICE ..... 3<sup>RD</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. By a Notice of Motion dated 30/06/2022, the Plaintiff brought this application pursuant to Order 40 Rule 1, 2 & 3(1), (2) and (3), Order 45 Rules 1, 2 & 3 of the *Civil Procedure Rules*, Section 3A and 80 of the *Civil Procedure Act* and all other enabling provisions of law seeking the following orders:
  1. Spent
  2. Spent
  3. That the Honourable Court be pleased to commit all the directors of the 1<sup>st</sup> Defendant/Respondent, namely Raymond Waweru Mwangi, Abdullahi Muigai Muiruri, Joseph Mwangi Karanja, Samuel Ngugi Ng'ang'a, Joseph Nduati Ng'endo, Kariuki Njoroge, John Mburu Karega, Mary Njeri Njenga and Peter Joseph Karumbi Keingatti, to jail for six months or for such period as the Honourable Court may deem fit for contravening the Order of the Honourable Court issued on 29/10/2019.



4. That the Honorable Court be pleased to grant an order of mandatory injunction against the 1<sup>st</sup> Defendants/ Respondent to remove all structures, walls, building erected, placed and/ or put on LR Numbers 15400/ 192, 15400/ 455, 15400/ 456, 15400/ 458, 15400/ 461, 15400/ 193 and 5 other Plots among Plot Numbers 161, 162, 163, 164, 166, 167, 168, 170 and 171 (IR 112111) (herein after referred to as the Suit Property) and to restore the Property to the state it was prior to the excavation on 29/06/2022 immediately and in any event within SEVEN (7) DAYS from the date of the order and in the alternative that in the event of failure by the 1<sup>st</sup> Defendant / Respondent to remove such walls, buildings and/ or structures, the Plaintiff / Applicant be at liberty to remove such structures and to restore the Suit Property and thereafter recover the cost of such removal from the 1<sup>st</sup> Defendant/ Respondent.
  5. That the Honourable Court be pleased to vary and/ or review the Court Order issued on 29/10/2019 and thereby grant the Plaintiff/ Applicant a right to erect a perimeter wall on the Suit Property to prevent further trespass onto the Suit Property pending the hearing and determination of the Suit.
  6. That the Honourable Court be pleased to grant an order that the Ward Commander, Soweto Police Station do supervise the enforcement of the Orders herein and do provide security to ensure compliance with the orders granted herein and the orders granted on 29/10/2019.
  7. That costs of and incidental to this Application be borne by the 1<sup>st</sup> Defendant/ Respondent.
2. The application is premised on the grounds stated on the face of the application, the Supporting Affidavit of Mishek Kaminju Mwangi the Applicant herein sworn on the 30/06/2022 and the Further Affidavit of Mishek Kaminju Mwangi sworn on the 7/11/2022.
  3. The application is opposed. There is a Replying Affidavit sworn by Joseph Mwangi Karanja, a director of the 1<sup>st</sup> Defendant Company, on 24/10/2022.
  4. On 11/10/2022 and 15/11/2022, the Court gave directions on filing of written submissions and a Ruling reserved. By the time of writing this Ruling, it is only the Plaintiff/Applicant who had filed their written submissions dated 7/11/2022, which I have considered.

### **The Plaintiff/Applicant's contention**

5. The long and short of it is that on 29/10/2019, the Honourable Court granted an Order by the consent of the parties, providing, inter alia that pending the hearing and determination of the Suit the status quo prevailing as of the date hereof as relates the title, possession and use of all those parcel of land known as LR Numbers 15400/ 192. 15400/ 455, 15400/ 456, 15400/ 458, 15400/ 461, 15400/ 193 and 5 other Plots among Plot Numbers 161, 162, 163, 164, 166, 167, 168. 170 and 171 (IR 112111) whose titles are in the process of preparation and issuance, all situated in Embakasi District in Nairobi City County shall be maintained and that for the avoidance of doubts neither party sell lease, charge, sell, transfer or develop the said parcels of land pending further orders of the court. That the Advocates for the 1<sup>st</sup> Defendant/Respondent were present in Court and consented to the Court order granted.



6. On 29/06/2022, while the Court Orders were in force, the directors, managers, agents and or servants of the 1<sup>st</sup> Defendant/ Respondent excavated part of the Suit Property and commenced to erect structures, walls and / or buildings on the Suit Property belonging to the Plaintiff/ Applicant.
7. It is their contention that the directors of the 1<sup>st</sup> Defendant/ Respondent have commenced construction of a wall on the Suit Property in violation of the Court Order, as seen on the photographs that were attached to the Supporting Affidavit and marked as MKM-3, together with the certificate of taking and reproduction of photographs that was attached to the Further Affidavit and marked as – MKM-1.
8. The Plaintiff/Applicant stated that on 9/07/2021 the directors, managers, agents and/ or servants of the 1<sup>st</sup> Defendant/ Respondent invaded the parcel of land known as Land Reference Number 15400/ 293 and brought down the boundary wall around it in violation of the Court Order.
9. This order was extracted and served upon the advocates for the 1<sup>st</sup> Defendant/ Respondent the Court Order on 8/09/2020, as per the copy of the Court Order duly stamped by the 1<sup>st</sup> Defendant/ Respondent's Advocates that was attached to the Supporting Affidavit and marked as MKM-2.
10. The Plaintiff/ Applicant depones that the actions of the 1<sup>st</sup> Defendant/ Respondent are in violation of the terms of the Court Order and are intended to undermine the authority of the Court in administration of justice.
11. The Plaintiff/ Applicants seeks for an order to facilitate the police to supervise the enforcement of the Court Order granted on 29/10/2019 and the Orders sought herein since the 1<sup>st</sup> Defendant / Respondent has populated by Suit Property with armed goons to frustrate enforcement of the orders of the Court.
12. The Plaintiff / Applicant seeks an order to compelling the 1<sup>st</sup> Defendant Respondent to remove the walls, buildings and/ or structures erected on the Suit Property within seven (7) days from the date of the Court Order and in the alternative and in the event of failure of the 1<sup>st</sup> Defendant to undertake the removal of the walls, buildings and/ or structures, for the Honourable Court to permit the Plaintiff/ Applicant to remove such structures at the cost of the 1st Defendant Respondent in order to purge the contempt herein.
13. Further the Plaintiff seeks an order that it be allowed to erect a perimeter wall to protect the Suit Property from trespassers pending the hearing and determination of the Suit.

#### **The 1<sup>st</sup> Defendant/Respondent's response**

14. Conversely, it is the 1<sup>st</sup> Defendant/Respondent's deposition that they are aware of the orders of the court issued on 29/10/2019 which was obtained by consent of all the parties hereto and that the import of the said orders was to maintain status quo of the suit properties as the court deliberated on the dispute of ownership between the plaintiffs and the 1<sup>st</sup> defendant herein. They deny being engaged in any demolition on the suit property to result in the contempt proceedings against themselves.
15. They deny that the directors, members, agents and /or employees of 1<sup>st</sup> Defendant company have at any point failed, refused or neglected to comply with the aforesaid Court order by demolishing any perimeter wall or commenced any excavation or construction activities on the alleged suit properties as alleged.
16. They depose that they have not invaded the suit properties or any other parcel at any time and specifically on the said 9/07/2021 and no evidence has been brought forth to support this spurious allegation.



- That specifically, the plaintiff/applicant has not produced any evidence showing that on the said 29/06/2022, any of the said directors of Kiambu Dandora Farmers Company Limited, members or anybody acting under our instructions engaged in the alleged demolition of the said wall as alleged by the plaintiff/applicant.
17. That as the Honorable Court issued orders of Status Quo on 29/10/2019, each of the parties herein are barred from commencing any activities on the suit properties herein and any party aggrieved can seek enforcement of the Court orders thereto from the Police. It is their case the plaintiffs have not produced any evidence of any report made to the relevant enforcement departments such as the police as regards the alleged contemptuous acts for investigations to ensue for purposes of establishing, who is culpable for the alleged contemptuous acts.
  18. That there is no evidence of a police report in form of an Occurrence Book report in the instant application confirming that the plaintiffs have sought police intervention in enforcing the orders of the Court. They confirm that they are in full compliance with the court orders of status quo and have not engaged in any demolition on the suit property as alleged by the plaintiffs.
  19. The 1<sup>st</sup> Defendant contends that it is aware that there are no construction activities on going on the suit property at the moment and the evidence in form of photographs is only meant to sway the opinion of the court against the 1<sup>st</sup> defendant. That contempt of court applications is serious in nature with a higher threshold and a party must avail sufficient evidence before court to confirm that an individual was in actual contempt of the court orders issued.
  20. The 1<sup>st</sup> Defendant avers that it is not true that on the 9/7/ 2021, their directors and members proceeded to the suit property and specifically on L.R 15400/293 and demolished a perimeter wall around it and no evidence has been adduced to support the said allegations.
  21. It is their contention that the Plaintiffs have not made a report of the allegations made above at any Police station to confirm the said allegations of construction of walls or demolitions on the suit properties. In the same breath, none of their directors or members have ever been summoned or arrested by the Police on account of any alleged demolition or violations of existing court orders to warrant them to be cited for contempt.
  22. He stated that “MKN-5” is not a CR 12 Search as envisaged under the *Companies Act* but a print -out which is not reliable and cannot therefore be used before the Honorable Court. That further, some of the parties that the plaintiff seeks to cite for Contempt are long deceased and as such could not have committed the alleged contemptuous acts. He alleges to have attached copies of their death certificates marked “JKM-1” but the same is not on the court record.
  23. The 1<sup>st</sup> Defendant deponed that it is upon the Plaintiffs/ Applicants to prove before this Honorable Court that it is indeed the 1st Defendant/Respondent that is responsible for the demolition of its perimeter wall. The evidence in terms of the photographs attached thereto and marked “MKM-3” cannot be authenticated or verified as there is no time stamp to the same as no certificate of production has been attached as per sections 65 and 106B of the *Evidence Act*. The Court however notes that the Plaintiffs/Applicants attached a certificate of production dated 30/06/2022 in their Further Affidavit dated 7/11/2022.
  24. They added that the photographs attached and marked “MKM-3” are not factual and represent the status as of the time when the suit was filed and such cannot be evidence of non-compliance with the orders of the court.
  25. They aver that the Plaintiff/Applicant has not in any way demonstrated how the 1<sup>st</sup> Defendant/ Respondent through its directors or any of its agents and or servants has contravened the orders of



this court and why they should be cited for contempt whatsoever. That it is a blatant lie that the Plaintiffs/Applicants have no way of ensuring compliance with this Court's Orders as they have a right to report the matters of disobedience of the Court orders to the Police who upon receipt of the same complaints should proceed to arrest and charge the 1<sup>st</sup> defendant/respondent directors, employees, agents or anyone acting under their instructions.

26. It is their contention that there is nothing absolutely from the application that warrants the Court to either find the 1<sup>st</sup> defendant/respondent's directors to have been in contempt of Court orders. That the 1<sup>st</sup> defendant company has neither demolished the perimeter wall on the suit premises nor engaged in any construction activities and it has continued to comply with the status quo orders issued on the 29/10/2019. That they pray that the same be dismissed.

### **Issues for Determination**

27. The application under consideration was filed on 1/07/2022. The Applicant seeks various substantive orders, namely; that all the directors of the 1<sup>st</sup> Defendant/Respondent be committed to jail for 6 months for contempt of court order issued on 29/10/2019, secondly, an order of mandatory injunction be issued against the 1<sup>st</sup> Defendant/Respondent to remove all structures, walls, buildings erected and placed on the suit property, and lastly, that the Court issues an order to vary and/or review the court order given on 29/10/2019 and thereby grant the Plaintiff/Applicant a right to erect a perimeter wall on the suit property to prevent further trespass onto the suit property.
28. Having found as herein above, I find that the following issues stand out for determination:-
- i. Whether all the directors of the 1<sup>st</sup> Defendant are guilty of contempt of court order issued on 29/10/2019.
  - ii. Whether the Plaintiff/Applicant should be granted orders of mandatory injunction at the interlocutory stage.
  - iii. Whether the Plaintiff/Applicant has established a case for review of the court order given on 29/10/2019.

### **Analysis and Determination**

#### **Whether all the directors of the 1<sup>st</sup> Defendant are guilty of contempt of court order issued on 29/10/2019**

29. Black's Law Dictionary (Ninth Edition) defines contempt of court as follows:

“Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment”

30. As it were contempt of Court is conduct that defies or disrespects the authority of the Court. Such conduct is frowned upon by the Courts as the same tends to impair the fair and efficient administration of justice.
31. Given its ramifications on the administration of justice, Order 40 Rule 3 of the Civil Procedure Rules empowers the Court in the event of disobedience or breach of any terms of a temporary injunction to order the property of the person guilty of such disobedience or breach to be attached. In addition, the Court may order such person to be detained in prison for a term not exceeding six months. The Court also has power to impose a monetary fine where it deems appropriate.



32. The rationale for contempt orders is set out in the case of *Teachers Service Commission v Kenya National Union of Teachers & 2 others* (2013) eKLR where Ndolo J observed as follows:

“38. The reason why courts will punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law”

33. Speaking on the same issue, in *T. N. Gadavarman Thiru Mulpad -vs- Ashok Khot & Another* (2006) 5 SCC, the Supreme Court of India underscored the significance of obeying Court orders in the following manner:

“Disobedience of this Court’s orders strikes at the very root of the rule of law on which the judicial system rests. The rule of the law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic state. If the Judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that Court’s orders are to be followed and complied with.”

34. In the case of *Kenya Human Rights Commission V Attorney General and Another* (supra), the Court observed as follows:

“Article 159 of *the Constitution* recognizes Judicial Authority of the Courts and Tribunals established under *the Constitution*. Courts and Tribunals exercise this authority on behalf of the people and for that reason they must not only be respected and obeyed but must also be complied with in order to enhance public confidence in the Judiciary which is vital for our Constitutional democracy. The Judiciary acts in accordance with the laws (Article 160) and exercises its authority through its judgments, decrees and orders or directions to check Government Power, keep it within the Constitutional stretch, hold the Legislature and Executive to account and thereby secure the rule of law, Administration of Justice and protection of Human Rights. For that reason, the authority of the Courts and dignity of their processes are maintained when Court orders are obeyed and respected thus Courts become effective in the discharge of their Constitutional mandate...

It is therefore a fundamental rule of law that court orders be obeyed and where an individual is enjoined by an order of the Court to do or refrain from a particular act, he has a duty to carry out that order. The Court has a duty to commit that individual for contempt of its orders where he deliberately fails to carry out such orders. See *Louis Ezekiel Hart v Chief George1 Ezekiel Hart* SC 52/2983 2<sup>nd</sup> February 1990.”

...The fact that the power to punish for contempt is inherent and not granted by statute follows the recognition by *the Constitution* in Article 159 that Judicial Authority is derived from the people and vests in and is exercised by Courts and Tribunals established by or under *the Constitution*”



35. In order to make a case for civil contempt the Applicant must prove certain elements which were set out in the case of *Cecil Miller v Jackson Njeru* (2017). The Court cited the book entitled “Contempt in Modern New Zealand” which sets out the elements of Civil contempt as follows:
- a. That the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the Defendant.
  - b. That the Defendant had knowledge of or proper notice of the terms of the order.
  - c. That the Defendant acted in breach of the terms of the order.
  - d. That the Defendant’s conduct was deliberate.
36. The Plaintiff/Applicant has alleged that the invaders confirmed to their directors that they were representing the interests of the 1<sup>st</sup> Defendant and persist with the unlawful construction. They allege that the contemptuous acts are still ongoing. A fact which has been denied by the 1<sup>st</sup> Defendant/Respondent.
37. In the Scottish case of *Stewart Robertson vs. Her Majesty’s Advocate*, 2007 HCAC 63, Lord Justice Clerk stated that:
- “contempt of Court is constituted by conduct that denotes willful defiance of or disrespect towards the Court or that willfully challenges or affronts the authority of the Court or the supremacy of the law, whether in civil or criminal proceedings”
38. And in the case of *Hadkinson vs. Hadkinson* (1952) ALL ER 567 Romer L.J stated as follows:
- “It is the plain and unqualified obligation of every person, against, or in respect of, whom an order is made by a Court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.”
39. In numerous decisions, the Courts have held that unless and until a Court order is discharged, it ought to be obeyed. As was held by the Court of Appeal in *Central Bank of Kenya & Another vs. Ratilal Automobiles Limited & Others*, Civil Application No. Nairobi 247 of 2006, it is a fundamental tenet of the rule of law that Court orders must be obeyed and it is not open to any person or persons to choose whether or not to comply with or to ignore such orders as directed to him or them by a Court of law.
40. The court held in the case of *Awadh vs. Marumbu (No. 2)* No. 53 of 2001 (2004) KLR 458, that it is the duty of the Court not to condone deliberate disobedience of its orders nor waiver from its responsibility to deal decisively and firmly with the approved contemnors.
41. In the instant case, the Court issued an order on 28/02/2019 and re-affirmed on 29/10/2019. The impugned Order was taken by consent by all the parties in this matter and served on the 1<sup>st</sup> Defendant/respondent on 8/09/2020 as seen on the court order produced before this court. This order was issued by Hon. Mr. Justice Okong’o.
42. I note that the orders issued by this Court are clear and unambiguous and are binding on the 1<sup>st</sup> Defendant/Respondent. The Plaintiff however only adduced photographic evidence in an attempt to demonstrate that the 1<sup>st</sup> Defendant/Respondent has disobeyed the court order given on 29/10/2019. From a glance, there is a slight difference between the photographs attached in the supporting affidavit and marked “MKM-3” and the photographs produced in this Court at the time of filing of this suit.



However, I agree with the 1<sup>st</sup> Defendant/Respondent, from the material placed before me, the said photographs attached in the supporting affidavit do not have a time stamp indicating the date and time that the photographs were taken.

43. I also opine that the supplied pictures showing the state of the suit premises did not exhibit anything to demonstrate that the directors of the 1<sup>st</sup> Defendant Company were carrying out the contemptuous acts and/or if the said acts are still ongoing. The photographs do not show, if at all, that it is the 1<sup>st</sup> Defendant/Respondent who is partaking in an act that does not honor the order of this court.
44. Additionally, I am in agreement with the 1<sup>st</sup> Defendant/Respondent and find that the plaintiff/applicant has not produced any evidence showing that on the said 29/06/2022, any of the said directors of Kiambu Dandora Farmers Company Limited, members or anybody were acting under the 1<sup>st</sup> Defendant's instructions to engage in the alleged demolition. Not to mention, the Plaintiff/Applicant did not provide a CR-12 to confirm that the directors he has listed were indeed the directors of the 1<sup>st</sup> Defendant Company. It is trite law that he who alleges must prove.
45. In the absence of any such evidence, it follows that the plaintiff/applicant's application to have all the directors of the 1<sup>st</sup> Defendant company cited for contempt was misconceived and without any basis.

**Whether the Plaintiff/Applicant should be granted orders of mandatory injunction at the interlocutory stage.**

46. The Plaintiff / Applicant seeks an order to compelling the 1<sup>st</sup> Defendant Respondent to remove the walls, buildings and/ or structures erected on the Suit Property within seven (7) days from the date of the Court Order and in the alternative and in the event of failure of the 1<sup>st</sup> Defendant to undertake the removal of the walls, buildings and/ or structures, for the Honourable Court to permit the Plaintiff/Applicant to remove such structures at the cost of the 1<sup>st</sup> Defendant/Respondent.
47. The 1<sup>st</sup> Defendant/Respondent, on the other hand, contends that it is aware that there are no construction activities on going on the suit property at the moment and the evidence in form of photographs is only meant to sway the opinion of the court against the 1<sup>st</sup> defendant/respondent.
48. I will now consider the question of whether these orders can be issued at the interlocutory stage. The decisions of the Court of Appeal offer guidance on this point.
49. In *Joseph Kaloki t/a Royal Family Assembly Vs Nancy Atieno Ouma* [2020] eKLR the court of appeal reaffirm its decision in *Kenya Breweries Limited & another Vs Washington O. Okeyo* [2002] eKLR and stated that:

“a mandatory injunction can be granted on an interlocutory application as well as at the hearing but should not normally be granted in the absence of special circumstances but that if a case is clear and which the court thinks it ought to be decided at once, a mandatory injunction will be granted at an interlocutory application.”

50. The Court also reaffirmed its decision in *Shariff Abdi Hassan Vs Nadhif Jama Adan* [2006] eKLR where it stated that:

“The courts have been reluctant to grant mandatory injunction at the interlocutory stage. However, where it is prima facie established as per the standards spelt out in law as stated above that the party against whom the mandatory injunction is sought is on the wrong, the



courts have taken action to ensure that justice is meted out without the need to wait for full hearing of the entire case.”

51. For the grant of mandatory injunctions, as was set out by the Court of Appeal in Kenya Breweries Ltd (supra), there must be special circumstances shown over and above the establishment of a prima facie case for a mandatory injunction to issue, and even then only in clear cases where the court thinks that the matter ought to be decided at once.
52. For the above reasons, I am not convinced that special circumstances exist in this matter that may warrant the grant of a mandatory injunction. I am also not convinced that this case is so clear that it ought to be decided at once. There are competing claims by both parties and these require further interrogation. At this stage I cannot tell for sure that the 1<sup>st</sup> Defendant/Respondent has no claim over the suit parcels or who is the registered owner of the suit property.
53. I therefore decline to grant orders of Mandatory injunction.

**Whether the Plaintiff/Applicant has established a case for review of the court order given on 29/10/2019.**

54. In regard to the third issue for determination, the integral prayer is that the Plaintiff/Applicant be allowed to erect a perimeter wall to protect the Suit Property from trespassers pending the hearing and determination of the Suit.
55. The order that the Plaintiff/Applicant seeks the Court to vary/review provided that the status quo be maintained pending the hearing and determination of this suit and that for the avoidance of doubt neither party shall lease, charge, sell, transfer or develop the said parcels of land pending further orders of the court.
56. The applicable law on setting aside of orders is in the provisions of section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules, which avail an opportunity to any person who feels aggrieved by a decree or order of the court to apply to have the said decree or order varied or set aside. Order 45 Rule 1 (b) of the Civil Procedure Rules in addition spells out conditions that must be met in an application for review of a decree or order as follows:

“There must be discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicants knowledge or could not be produced by him at the time when the decree was passed or the order made, mistake or error apparent on the face of the record, or for any other sufficient reason, the application must be made without unreasonable delay.”

57. In the case of *Stephen Gathua Kimani –Vs- Nancy Wanjira Waruingi / Providence Auctioneers* (2016) eKLR and *Republic –Vs- Public Procurement Administrative Review Board & 2 Others* (2018) eKLR it was held as follows:-

“That the rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review limiting it to the following grounds:

- (a) .....
- (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.”

58. The Court’s discretionary power should, however, be exercised judiciously, with the overriding objective of ensuring that justice is done to all the parties. The guiding principle in the Court’s exercise of this judicial discretion was laid down in *Mbogo & Another Vs Shah* EALR 1908.
59. It is the Plaintiff/Applicant’s prayer that the Court allows them to erect a perimeter wall thereby varying and/or setting aside the status quo order given on 29/10/2019 on grounds that they want to protect the Suit Property from trespassers pending the hearing and determination of the Suit.
60. I have perused the court record and note that the orders of Okong’o J made on 29/10/2019 were given by consent of all the parties to this suit. The import of the said orders was to maintain status quo of the suit properties as the court deliberated on the dispute of ownership between the plaintiffs and the 1<sup>st</sup> defendant herein. Furthermore, I have also found that there was no evidence before this court demonstrating that the 1<sup>st</sup> Defendant/Respondent engaged in any demolition on the suit property and/or is engaged in any construction activities on the suit property. The Plaintiff/Applicant has failed to prove whether there was disobedience of status quo orders.
61. It is for the foregoing reasons that I therefore find that no sufficient ground has been shown for the review of the orders of 29/10/2019 and cannot therefore grant the order for review that the Plaintiff/Applicant is seeking.

#### **Disposal orders**

62. It follows that I did not find any basis for the Application dated 30/06/2022. The same is dismissed with no orders as to costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 14<sup>TH</sup> DAY OF FEBRUARY 2023.**

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**MOGENI J**

**JUDGE**

Ruling read in virtual court in the presence of:

Nderitu for the Plaintiff/Applicant

Ms. Opiyo holding brief for Muruga for 1<sup>st</sup> Defendant

No appearance for 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants

Ms. Caroline Sagina : Court Assistant

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**MOGENI J**

**JUDGE**

