



**Museto Women Group (Suing through its officials) Sarah Njeri
Mwangi & 2 others v Ngugi & 3 others (Environment & Land Case
436 of 2017) [2025] KEELC 1397 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1397 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 436 OF 2017
LC KOMINGOI, J
MARCH 20, 2025**

BETWEEN

**MUSETO WOMEN GROUP (SUING THROUGH ITS OFFICIALS) SARAH
NJERI MWANGI 1ST PLAINTIFF
MARY WAIRIMU NJOROGE 2ND PLAINTIFF
BENEDETA MBELANGWA WATHOME 3RD PLAINTIFF**

AND

**JOSEPH KARIUKI NGUGI 1ST DEFENDANT
JOHN KASALE 2ND DEFENDANT
SARAH MUTUNGO 3RD DEFENDANT
COUNTY GOVERNMENT OF KAJIADO 4TH DEFENDANT**

RULING

1. This is the Notice of Motion dated 25th July 2024 brought under;

(Section 3, 3A and 80 of the *Civil Procedure Act*, Order 9 Rule 9, Order 45 Rule 1 of the Civil Procedure Rules, Article 159 of *the Constitution* of Kenya and all other enabling Laws)
2. It seeks orders;
 1. That this Honourable Court be pleased to Review and set aside this Court's Judgement dated June 20, 2024.
 2. Any other orders that are just and expedient in the circumstances for the course of justice.



3. That the costs of this application be provided for.
3. The grounds are on the face of the Application and are set out in paragraphs 1 to 8.
4. The Application is supported by the Affidavit of Sarah Njeri Mwangi, one of the Plaintiffs'/Applicants' sworn on the 25th July 2024.
5. The Application is opposed. There are grounds of opposition filed by the 1st Defendant, dated 5th November 2024. He has also filed Replying Affidavit sworn on the 5th November 2024.
6. The Notice of Motion was canvassed by way of written submissions.

The Plaintiffs'/Applicants' Submissions.

7. They are dated 9th January 2025.
They raise one issue for determination;

Whether the Applicant has met the requirements as set out in the law.

8. Counsel submitted that Section 80 of the *Civil Procedure Act* and Order 45 rule 1 of the Civil Procedure Rule, confer jurisdiction on this Honorable Court to review its decision. That the Plaintiffs'/Applicants' case is that there is discovery of new and important matters that they could not have placed before the court before judgement was delivered.
He has put forward the case of Stephen Wanyoike Kinuthia (suing on behalf of John Kinuthia Marega (deceased) Vs. Kariuki Marega & Another (2018) eKLR.
9. Counsel further submitted that the Plaintiffs Chairman suffered from a medical situation exacerbated by her old age which impacted her cognitive memory hence she could not reasonably recall the documents in her possession to be produced during trial.
10. It is further submitted that the Application has been brought without undue delay.
11. Counsel also submitted that there are sufficient reasons to warrant this Honourable court to exercise discretion in favour of the plaintiffs. He has put forward the cases of Shanzu Investments Limited Vs Commissioner for Lands Civil Appeal No. 100 of 1993; Wangechi Kimita Vs. Wakibiru Mutahi (1985) KECA 73 (KLR); The Official Receiver And Liquidator Vs. Freight Forwarders Kenya Limited (2000) KECA 357 (KLR); Pancras T. Swai Vs. Kenya Breweries Limited (2014) eKLR .
12. Reliance is also placed on Article 48, and 20 (3) a of *the Constitution* of Kenya.
He prays that the Application be allowed.

The 1st Defendants'/Respondents' Submissions.

13. They are dated 21st January 2025.
Counsel submitted that the grounds in support of the Notice of Motion dated 25th July 2024 do not fall under the ambit of Order 45 of the Civil Procedure Rules. He has put forward the case of National Bank of Kenya Limited Vs. Ndungu Njau (1997) KECA 71 (KLR).
14. It is also submitted that this matter has been fully canvassed before this Honourable Court where all parties were granted the opportunity to appear and present their evidence. The suit proceeded to full trial and that there is no evidence that the Plaintiffs chairperson was incapacitated.



15. Counsel also submitted that litigation must come to an end as the plaintiffs’ want to have a second bite at the cherry and that the plaintiffs’ remedy if any, lies on appeal and not review. He prays that the Application be dismissed with costs.

Analysis and Determination

16. I have considered the Notice of Motion, the affidavit in support, the response thereto, the rival submissions and the authorities cited. The issues for determination are ;
- i. Whether the Judgement dated 20th June 2024 ought to be reviewed and or set aside.
 - ii. Who should bear costs of this application?

17. 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 Rule provides that;

“(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.

- (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.”

18. It is clear from the above provisions that there are three conditions set out from which a party can seek this court’s discretion. A party has to satisfy any of the conditions.
19. In the instant scenario, the Plaintiffs’/Applicants’ ground is that the Plaintiffs’ Chairperson, Sarah Njeri Mwangi who testified as PW1, has availed critical documents that were not produced during the pendency and hearing of the suit.



In paragraph 14 of the Supporting Affidavit of Sarah Njeri Mwangi, sworn on the 25th July 2024 she depones;

“That to manage the working memory, my psychotherapist, Winnie Nasieku Pere has had me under therapy and review. She has attributed the inadvertence of omitting the documents herein which were in possession to what she has been taking care of via Therapy and treatment. See attached copy of my patient psychotherapy report marked that I waived Doctor patient confidentiality to be supplied to the Firm of Advocates representing us. the same is marked as MWG -6.”

20. I agree with the 1st Defendants'/Respondents' submission that no such evidence has been provided. I had the opportunity of seeing and hearing the deponent, testify on 29th June 2023 and she did not strike me as someone who was experiencing memory loss.
21. I also agree with the 1st Defendants'/Respondents' submission that if there were any documents that the plaintiffs ought to have been produced but did not, then this was negligence on their part. This court will not allow any party to drag another through a second trial because of their negligence. Equity aids the vigilant not the indolent.
22. The plaintiffs'/Applicants' do not state which new evidence has been discovered that was not within their reach during the pendency of this suit.
23. This Honourable court in paragraph 26 of the judgement dated 20th June 2024 observed thus;
- “Since both parties have pleaded that there was a suit regarding the same subject matter and between the same parties which was already determined by a court of competent jurisdiction, then the Plaintiff's recourse was in filing an appeal and not in filing another suit”.
- Even if the court were to allow this application, it would not change the above position. The plaintiffs' remedy lies on appeal.
24. In the case of Stephen Wanyoike Kinuthia (suing on behalf of John Kinuthia Marega (deceased) Vs. Kariuki Marega & Another (2018) eKLR , the Court of Appeal stated;
- “We emphasize that an application based on the ground of discovery of new and important matter an evidence will not be granted without strict proof of such allegation.”
25. As stated earlier the Plaintiffs'/Applicants' have failed to demonstrate that they just discovered the existence of the documents. The plaintiffs' Chairperson's incapacitation has also not been proved.
26. In conclusion I find no merit in this application and the same is dismissed with costs to the 1st Defendant/Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 20TH DAY OF MARCH 2025.

L. KOMINGOI
JUDGE.

In the Presence of:



Mr. Adede for the Plaintiff/Applicant.

Mr. Ondabu fo the 1st Defendant.

N/A for the 2nd, 3rd Defendants.

Mutisya – Court Assistant.

