



**Mwasima Mbuwa Welfare Association v Teita Estate Sisal  
Limited & 5 others (Environment & Land Petition E004 of 2024)  
[2025] KEELC 3314 (KLR) (Environment and Land) (23 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3314 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT VOI  
ENVIRONMENT AND LAND  
ENVIRONMENT & LAND PETITION E004 OF 2024  
EK WABWOTO, J  
APRIL 23, 2025**

**BETWEEN**

**MWASIMA MBUWA WELFARE ASSOCIATION ..... PETITIONER**

**AND**

**TEITA ESTATE SISAL LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY GOVERNMENT OF TAITA TAVETA ..... 2<sup>ND</sup> RESPONDENT**

**TAITA TAVETA, COUNTY EXECUTIVE MEMBER, MINISTRY OF WATER,  
SANITATION & IRRIGATION ..... 3<sup>RD</sup> RESPONDENT**

**TAITA TAVETA, COUNTY EXECUTIVE MEMBER, MINISTRY OF LANDS &  
PHYSICAL PLANNING ..... 4<sup>TH</sup> RESPONDENT**

**LAND REGISTRAR, TAITA TAVETA ..... 5<sup>TH</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

1. This Ruling is in respect to the Petitioner’s application dated 12<sup>th</sup> February 2025 seeking the following orders;
  - a. Spent...
  - b. That this Honourable Court be pleased to vacate, set aside, vary and or review its judgment delivered on 23.10.2024 dismissing the Petitioner’s Petition for lack of sufficient evidence.



- c. That the Honourable Court be pleased to direct and order that the Petition is sufficiently proved hence merited.
  - d. That the Honourable Court be pleased to issue an other orders it deems just in the circumstances.
  - e. Costs of this application be provided for.
2. The application was premised on the grounds on its face and supported by the Affidavit sworn by Mnjala Mwaluma on the 12<sup>th</sup> February 2025. The Petitioner also filed written submissions dated 11<sup>th</sup> March 2025 in support of the application.
  3. It was the contended by the Petitioner that the court's finding in dismissing the Petition in its judgment dated 23.10.2024 was based on an inadvertent error despite the Petitioner availing compelling evidence.
  4. It was averred that in proving ownership of the suit parcel, the Petitioner provided a legitimate parliamentary recommendation duly signed and endorsed by the then Cabinet Secretary For Lands, Jacob Kaimenyi recommending all the suit properties and ranches in Taita Taveta County be awarded to the dawida community. It was also averred that despite the fact that the said recommendations have not been implemented, the 1<sup>st</sup> Respondent through unexplained circumstances was able to short change the whole process and have and still has the properties in its name.
  5. It was further averred that there is a clear manifestation of fraud and forgery which were not rebutted satisfactory by the 1<sup>st</sup> Respondent during the hearing of the Petition and hence the court ought to exercise its discretion and grant the orders sought in the application.
  6. In its submissions, the Petitioner placed reliance on Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules and the cases of Shanzu Investments Limited vs Commissioner for Lands Civil Appeal No. 100 of 1993, Patriotic Guards Ltd vs James Kipchirchir Sambu (2018) eKLR among others and urged the court to find merit in the application and allow the same.
  7. The application was opposed by the Respondents, the 1<sup>st</sup> Respondent filed grounds of opposition dated 25<sup>th</sup> February 2025 and written submissions dated 26<sup>th</sup> March 2025, while the 2<sup>nd</sup> to 4<sup>th</sup> Respondents filed a Replying Affidavit sworn by Dinah Kishanga Katema on the 11<sup>th</sup> March 2025 and written submissions dated 25<sup>th</sup> March 2025, the 5<sup>th</sup> and 6<sup>th</sup> Respondents filed grounds of opposition dated 24<sup>th</sup> March 2025 and written submissions dated 24<sup>th</sup> March 2025. The 7<sup>th</sup> and 8<sup>th</sup> Respondents filed grounds of opposition dated 25<sup>th</sup> February 2025 and written submissions dated 24<sup>th</sup> March 2025.
  8. All the Respondents took a common position to the effect that that the application does not met the threshold for grant of the prayers sought since the issues raised by the Petitioner as the basis upon which the court ought to exercise its discretion and review it judgment had already been considered by the court and in reintroducing the same, the Petitioner was merely seeking to litigate the matter afresh when the court had already rendered its judgment. All the Respondents also urged the court to dismiss the said application.
  9. Pursuant to the directions issued by the court, it was directed that the application be canvassed by way of written submissions. All the parties complied with the court's directions and filed their respective submissions which the court has duly considered.
  10. This court having considered the application, written submissions and affidavits filed by the parties has outlined the following two salient issues in determining the said application;
    - i. Whether the application is merited.



- ii. What orders should issue as to costs.
11. The jurisdiction of the Court to review its own orders is provided for in Section 80 of the [Civil Procedure Act](#) and Order 45 Rule of the Civil Procedure Rules 2010

Section 80 stipulates: -

“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.”

12. Order 45 Rule 1 of the Civil Procedure Rules is couched in similar terms and goes on to provide the procedure and the conditions that an Applicant must satisfy as follows: -

“45(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.”

13. The Rules limit the ground for review to be: -

- 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,
- c. 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.

14. In this regard, for a Court to review its own orders, it must be demonstrated that there is discovery of new and important matter or evidence. It must also be shown that the new evidence was not within the knowledge of the party seeking review or could not be produced at the time the orders were made. Such party must also satisfy the Court that this was the case even after exercise of due diligence. A Court will also review its orders if it is demonstrated that there is some mistake or error apparent on the face of the record, or for any other sufficient reason. The error must be evident on the face of the record and should not require much labour in explanation. An Application for review must also be made without unreasonable delay.



15. In the case of Republic versus Cabinet Secretary for Interior and Co-ordination of National Government Ex parte Abulahi Said Salad [2019] eKLR the Court cited National Bank of Kenya Ltd vs Ndungu Njau, {1996} KLR 469 (CAK) at Page 381 wherein it was held as follows:

“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. Similarly, in Multichoice (Kenya) Ltd v Wananchi Group (Kenya) Limited & 2 Others [2020] eKLR the Court of Appeal held that:

“It bears emphasizing that the phrase "mistake or error apparent" by its very connotation conveys the fact that the error envisaged is one which is evident per se from the record and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. It is prima-facie visible. It must relate to an error of inadvertence, one which strikes one on merely looking at record. An apparent error on the face of the record has been described in the most simplified manner by the Tanzania Court of Appeal adopting with approval commentaries by Mulla, Indian Civil Procedure Code, 14th Edition Pg 2335-36...”
17. In the instant application, the Petitioner argued that the court failed to consider the evidence placed before it in respect to the ownership of the land and further the aspects of the recommendations made by the Parliamentary Committee. The Respondents on the other hand maintained that the issues raised by the Petitioner were considered by the court and further that the Petitioner is merely seeking to relitigate the issues afresh through the said application. It was also argued by the Respondents that the court is being asked to hear the matter afresh which can never be the case for review.
18. From the perusal of the judgment of the court delivered on the 23.10.2024, it was evident that the issues raised by the Petitioner in the instant application were the same issues raised in the Petition which the court duly considered in rendering its judgement and as such the Petitioner cannot have a second bite at the cherry.
19. In the case of Abasi Belinda vs. Frederick Kngwamu and Another [1963] E.A 557 Bennett J. held that:

“a point which may be a good ground of appeal may not be a good ground for review and an erroneous view of evidence or law is not a ground for review though it may be a good ground for appeal.” A review lies only for patent error where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.
20. In the instant case, having carefully considered the application herein and being guided by the aforementioned authorities, the court finds that the application has not met the threshold to warrant the grant of the orders sought.
21. In the end, the Application dated February 12, 2025 is devoid of merit and the same is dismissed with no orders as to costs.



**DATED SIGNED AND DELIVERED BY EMAIL THIS 23<sup>RD</sup> DAY OF APRIL 2025.**

**E.K. WABWOTO**

**JUDGE**

