



**Namakhuli & 3 others v Warunga (Environmental and Land Originating  
Summons E002 of 2023) [2025] KEELC 3184 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3184 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E002 OF 2023**

**EC CHERONO, J**

**APRIL 3, 2025**

**BETWEEN**

**ALIMINAH NAMAKHULI ..... 1<sup>ST</sup> APPLICANT**

**ELIZABETH NANJALA WANYAMA ..... 2<sup>ND</sup> APPLICANT**

**PRISCILLA ISISKA MCHEYWA ..... 3<sup>RD</sup> APPLICANT**

**ALICE NANYAMA MCHEYWA ..... 4<sup>TH</sup> APPLICANT**

**AND**

**WENANI SIMIYU WARUNGA ..... RESPONDENT**

**RULING**

1. Vide a Notice of Motion dated 18/11/2024, the Applicants moved this Honourable Court seeking the following orders;
  1. That this honourable court be pleased to review its decree as ordered in judgment delivered on 17-10-2024 than 17-10-2023.
  2. Costs of this Application be provided for.
2. The application is based on the following four grounds shown on the face of the said application;
  - i. There is an error on the day and date, when judgment was delivered.
  - ii. The Judge was not clear whether he set aside or not a decree contained in Webuye ELC No.6 of 2022.
  - iii. Therefore, unless judgment of this honourable court is reviewed, there shall be a mix of actions/events in implementation of the (2) decrees.



- iv. It is only in the interest of justice that the orders being sought by the Applicants/defendant be granted.
3. Other than the four grounds shown on the face of the application, the application is further supported by the affidavit of Wenani Simiyu Werunga, the Applicant herein sworn on even date.
4. By way of a response, the Respondents filed a replying affidavit sworn by Aluminah Namakhuli on 29/01/2025.
5. In his supporting affidavit, the Applicant deposed that upon being supplied with the judgment of this Court delivered on 17/10/2024, he discovered that it contains an error on the delivery date of judgment which indicates as 17/10/2024 but wrongly typed as 17/10/2023. He also stated that this court did not fully address issues of existence of the decree in Webuye PM-ELC No.6 of 2022 and that he has been left in dilemma. He further stated that prior to delivering the judgment, this court had dismissed an application which had sought stay of execution of the Magistrate's decree in the lower court. He further stated that the decree holders herein purport that the decree in Webuye Magistrate's court had been dismissed by this Honourable Court.
6. The Respondents in their replying affidavit opposed the application on grounds that it is incompetent, misconceived, incurably defective, vexatious spurious, frivolous and an abuse of the due process of the court. She deposed that there is no good ground for review of the judgment and if the Applicant was dissatisfied with the verdict of this Court, he had an option to appeal. She stated that there is neither an error nor a mistake of fact apparent on the face of the record that require an order for review. The Respondents also stated that there is no discovery of any new or important evidence which could not be produced by the defendant/Applicant at the time of hearing of the case. She stated that there is no confusion or mix of actions in implementing the two decrees as the parties are not the same. It was further deposed that the judgment in this court was not an appeal from the purported consent/decreed in Webuye PMCC-ELC No.6 of 2021 but in effect rendered the mischievously obtained consent/order superfluous and incapable of execution therefore the defendant/Applicant has the option of asking the court to vacate the "consent order". That the consent order was a sham and a mere ploy by the defendant/Applicant acting in cahoots with Joyce Nasimiyu Wanyama before the judgment herein threw a spanner in the works. That a typing error in the date can be corrected once it is brought to the attention of the Court and that cannot be a ground for review.
7. I have considered the Notice of Motion application dated 18/11/2024, the supporting affidavit, the Replying affidavit and the relevant law. Order 45(1) of the Civil Procedure Rules provides as follows;

- “(1) Any party 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.”



8. From my reading of the applicable law, there are three grounds a party may apply for the review of a judgment/decree or order. The three grounds are as follows;
  - i. Discovery of new and important matter or evidence which was not within his knowledge or could not be produced by him at the time the decree/order was passed and/or made, despite the exercise of due diligence.
  - ii. Any other sufficient reason.
  - iii. The application must be made without unreasonable delay.
9. The Applicant in this application is seeking a review of the judgment of this honourable court delivered on 17/10/2024. According to the Applicant, this Honourable court delivered the impugned judgment on 17/10/2024 but erroneously indicated as 17/10/2023. However, a copy of the said judgment was not annexed to the application. It was imperative for the applicant to annex a copy of the said judgment/decree to the supporting affidavit to enable this court appreciate the same. In any event, an error on the date judgment/decree was delivered or order made is a clerical mistake/error which can be corrected pursuant to the provisions of section 99 of the *Civil Procedure Act* and not by an application under order 45 of the *CPR*. There is no discovery of a new and important matter or evidence which was not within the Applicant's knowledge or could not be produced by him at time the judgment was delivered. I agree with Counsel for the Respondents that this application is scandalous and out for dismissal.
10. The upshot of my finding is that the Notice of Motion application dated November 18, 2024 is devoid of merit and the same is hereby dismissed with costs to the Respondents.
11. Orders accordingly.

**READ, DELIVERED AND SIGNED AT BUNGOMA THIS 03<sup>RD</sup> APRIL, 2025.**

**HON. E.C CHERONO**

**ELC JUDGE.**

In the presence of;

1. Applicant in person-present
2. Mr. Were for the Respondents.
3. Bett C/A.

