



**Kerich v Misik & another (Environment and Land Case  
77 of 2016) [2025] KEELC 5004 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5004 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERICHO  
ENVIRONMENT AND LAND CASE 77 OF 2016**

**LA OMOLLO, J**

**JULY 3, 2025**

**BETWEEN**

**SARAH CHEPKOSGEI KERICH ..... PLAINTIFF**

**AND**

**ANNAH MISIK ..... 1<sup>ST</sup> DEFENDANT**

**JOSEAH KERICH ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of the 2<sup>nd</sup> Defendant/Applicant's Notice of Motion application dated 9<sup>th</sup> July, 2024. It is expressed to be brought under Order 10 Rule 11, Order 12 Rule 7 & Order 51 of the Civil Procedure Rules, Section 3A of the [Civil Procedure Act](#) and Article 48 of [the Constitution](#) of Kenya.
2. The application seeks the following orders;
  - a. Spent
  - b. That pending the hearing and determination of this application and suit, the Honourable Court be pleased to set aside its eviction orders in the decree dated 27<sup>th</sup> June, 2023 and the Court order dated 6<sup>th</sup> June, 2024.
  - c. Spent
  - d. Spent
  - e. That the Honourable Court has the discretion to grant the orders sought by the Applicant herein who should not suffer owing to improper and unlawful sub-division and transfer of Kericho/Kiptugumo/890.
  - f. That the Applicant shall suffer irreparable loss and damage should they be evicted from the parcel of land belonging to their father/father-in-law respectively.



- g. That costs of the application to be in the cause.
3. The application is based on the grounds on its face and the Supporting Affidavit of one Joseah Kerich sworn on 9<sup>th</sup> July, 2024.

### **Factual Background.**

4. The Plaintiff/Respondent commenced the present proceedings vide the Plaint dated 24<sup>th</sup> October, 2016 where she sought the following prayers;
  - a. A declaration that the Defendants are trespassers on the Plaintiff's parcel of land known as Kericho/Kiptugumo/1198.
  - b. An order compelling the Defendants herein to deliver vacant possession of the suit land or in default the Defendants and their families be evicted from land parcel Kericho/Kiptugumo/1198.
  - c. Costs and interest.
  - d. Any other relief the Court may deem fit and just to grant.
5. The 1<sup>st</sup> Defendant/Respondent filed her statement of Defence on 20<sup>th</sup> March, 2017 where she denied the averments in the Plaint and prayed that the Plaintiff/Respondent's suit be dismissed with costs.
6. The 2<sup>nd</sup> Defendant/Applicant also filed his statement of Defence on 20<sup>th</sup> March, 2017 where he denied the averments in the Plaint and prayed that the Plaintiff/Respondent's suit be dismissed with costs.
7. On 4<sup>th</sup> October, 2017 the 1<sup>st</sup> Defendant/Respondent and the 2<sup>nd</sup> Defendant/Applicant filed a joint Statement of Defence dated 4<sup>th</sup> October, 2017. They denied the averments in the Plaint and prayed that the Plaintiff/Respondent's suit be dismissed with costs.
8. On 15<sup>th</sup> June, 2023 the Court delivered judgement and issued the following orders;
  - a. A declaration is hereby issued that the Defendants are trespassers on the Plaintiff's parcel of land known as Kericho/Kiptugumo/1198.
  - b. The Defendants shall herein deliver vacant possession of the suit land within 30 days upon delivery of this judgement or in default they and their families be evicted from land parcel Kericho/Kiptugumo/1198.
  - c. Costs of this suit with interest at Court rates.
9. The application under consideration came up for directions on 2<sup>nd</sup> October, 2024 when the Court directed that it be heard by way of written submissions.
10. On 11<sup>th</sup> December, 2024, the matter was mentioned to confirm filing of submissions and then reserved for ruling.

### **The 2<sup>nd</sup> Defendant/Applicant's Contention.**

11. The affidavit in support of the application is sworn by Joseah Kerich the 2<sup>nd</sup> Defendant/Applicant.
12. He contends that he became aware of the present suit when Hegeons Auctioneers 'invaded' his home and threatened to evict his children and demolish his home while alleging that their home is on land parcel No. Kericho/Kiptugumo/1198 and yet they live on their parent's land which is land parcel No. Kericho/Kiptugumo/890.



13. He also contends that he is the son of Kipkerich Arap Chirchir who was the owner of land parcel No. Kericho/Kiptugumo/890 which he alleges that the Plaintiff/Respondent subdivided into seven parcels and seven plots each measuring 0.95 Ha and 0.025 Ha respectively.
14. He further contends that the said subdivision and transfer was done without the knowledge of the owner Kipkerich Arap Chirchir, who is still alive and is 83 years old.
15. It is his contention that the Plaintiff/Respondent is his sister in law and sometime in 2008/2009 she took his father who is the registered owner of land parcel No. Kericho/Kiptugumo/890 to the Lands Tribunal where she alleged that the said parcel of land belonged to her. He adds that the verdict of the Land Tribunal was adopted and an order issued in Kericho CMCC Misc. Appl No. 45 of 2009 which was to the effect that Kipkerich Arap Chirchir was the bonafide owner of land parcel No. Kericho/Kiptugumo/890.
16. It is also his contention that he has read through the present proceedings and has learnt that he was not served with any pleadings, hearing notices or invited to give evidence.
17. It is further his contention that he noted that his sister the 1<sup>st</sup> Defendant/Respondent herein who lives on land parcel No. Kericho/Kiptugumo/207 was served and she filed a Statement of Defence. He adds that she called one witness Kipkemoi Sigei who gave evidence.
18. He contends that upon perusal of the Court file, he learnt that a surveyor was ordered to visit land parcel No's Kericho/Kiptugumo/890 on 6<sup>th</sup> February, 2018 to solve a boundary dispute. He adds that the boundary dispute was between land parcel No. Kericho/Kiptugumo/800 (sic) and Kericho/Kiptugumo/207 which report was filed and used by the Court in its judgement which was delivered on 15<sup>th</sup> June, 2023.
19. He also contends that he together with his father and all his siblings reside on the suit parcel together with the Plaintiff/Respondent who chose to subdivide and transfer their father's parcel of land to herself and six others. He adds that this was done without their consent and/or information vide the mutation dated 5<sup>th</sup> February, 2010 which bears a 'fake' signature which is alleged to belong to their father.
20. He further contends that the Plaintiff/Respondent was registered as the owner of land parcel No. Kericho/Kiptugumo/1198.
21. It is his contention that their father did not instruct the Plaintiff/Respondent to subdivide the suit parcel into seven commercial plots and seven parcels of land.
22. It is also his contention that the Plaintiff/Respondent filed a Statement in Court on 26<sup>th</sup> October, 2016 where at paragraph 1 she contends that the Court in Kericho CMCC Misc Appl No. 45 of 2008 held that land parcel No. Kericho/Kiptugumo/890 be subdivided.
23. It is further his contention that he was surprised that the Plaintiff/Respondent does not have any fear of the Kipsigis Cultural Law, attendant curses and reprisals over allegations of death on persons who are alive as she transferred land belonging to a person who is alive while alleging that the said person was dead.
24. He contends that through the affidavit sworn in support of the application he has given his spouse Nancy Kerich powers to depose, swear, sign and tender evidence with regard to this matter together with his father who also swore an affidavit in support of the application under consideration.



25. He also contends that he is aggrieved and dissatisfied with the Court's judgement since he did not get an opportunity to defend himself owing to the alleged mischief and deceit of the Plaintiff/Respondent herein.
26. He further contends that he stands to suffer if the present application is not heard and stay granted. He adds that *the Constitution* provides that he ought to have been afforded an opportunity to be heard as he was the 2<sup>nd</sup> Defendant in this matter.
27. It is his contention that he has a good defence with overwhelming chances of success.
28. He ends his deposition by stating that if the eviction order is executed, he together with his family stand to suffer loss and irreparable damage.

### **The Plaintiff/Respondent's Response.**

29. In response, the Plaintiff/Respondent filed a Replying Affidavit sworn on 6<sup>th</sup> December, 2024.
30. She deposes that she is advised by her Advocates on record that the application under consideration violates the provisions of Order 9 Rule 9 of the Civil Procedure Rules and it should therefore be struck out with costs.
31. She also deposes that paragraphs two and six of the affidavit in support of the application are full of falsehood and are aimed at hoodwinking the Court and seeking sympathy from it.
32. She further deposes that it is on record that the 2<sup>nd</sup> Defendant/Applicant filed a 'Memorandum of Appearance to act in person' dated 3<sup>rd</sup> March, 2017 and a Statement of Defence dated the same date.
33. It is her deposition that this is proof that that the 2<sup>nd</sup> Defendant/Applicant was served with Summons to enter appearance and pleadings.
34. It is also her deposition that the 2<sup>nd</sup> Defendant/Applicant participated in the present proceedings and was represented by the firm of M/s E.O Nyadimo & Co. Advocates and therefore judgement was rightfully entered in her favour.
35. It is further her deposition that her Advocates on record M/S Obondo Koko & Co. Advocates served all Court processes upon the firm of M/s Nyadimo & Co. Advocates who accepted service on behalf of the 2<sup>nd</sup> Defendant/Applicant and never protested.
36. She deposes that the 2<sup>nd</sup> Defendant/Applicant was aware of the present proceedings and if he did not participate, it was to his detriment as he was properly served.
37. She also deposes that she is advised by her advocates on record that the 2<sup>nd</sup> Defendant/Applicant has not introduced any new facts that were not within his knowledge during the hearing of the case.
38. She further deposes that the 2<sup>nd</sup> Defendant/Applicant has not met the required threshold required under Order 45 of the Civil Procedure Rules to warrant this Court to review its judgement.
39. It is her deposition that the 2<sup>nd</sup> Defendant/Applicant is peddling a falsehood by stating that he was never served with Court pleadings and yet he at some point acted in person before he appointed M/S E.O Nyadimo & Co. Advocates. She adds that the Court should disregard the averments by the 2<sup>nd</sup> Defendant/Applicant in his application and supporting affidavit.
40. It is also her deposition that the issues raised by the 2<sup>nd</sup> Defendant/Applicant with regard to the subdivision of land parcel No. Kericho/Kiptugumo/890 and the transfer of land parcel No. Kericho/Kiptugumo/1198 are not true as the subdivision was done within the law.



41. It is further her deposition that the said issues were adjudicated at the Land Disputes Tribunal and adopted in Court. A decree was extracted and transfer forms executed by the Executive Officer Kericho Law Courts upon being sanctioned by the Court.
42. She deposes that she is advised by her advocates on record that the law aids the vigilant and not the indolent. She goes on to state that the 2<sup>nd</sup> Defendant/Applicant filed a 'Memorandum to act in person' and a Statement of Defence in the year 2017 and he is therefore an 'indolent person whom the law cannot assist'.
43. She admits the averments of paragraph 10 of the affidavit in support of the application and deposes that the 2<sup>nd</sup> Defendant/Applicant is a brother to her late husband. She adds that they lived together on the said portion of land and were blessed with two children.
44. She also deposes that after the demise of her husband, they tried to evict her and that is why she moved to the Land Disputes Tribunal which issued a decision that was adopted by the Court. She adds that she filed the present suit in order to enforce the said decree.
45. She reiterates that the 2<sup>nd</sup> Defendant/Applicant participated in the proceedings and admits that the District Land Surveyor visited the suit parcel in order to establish the boundary of land parcel No. Kericho/Kiptugumo/1198.
46. She deposes that the Court conducted a site visit and a report was made which was instrumental in the decision that was made by the Court. She adds that Counsel for the 2<sup>nd</sup> Defendant/Applicant interrogated the said report and he cannot therefore dismiss it.
47. She ends her deposition by stating that the 2<sup>nd</sup> Defendant/Applicant's application is an afterthought and a ploy to delay the enjoyment of the fruits of her judgement and it should therefore be dismissed.

#### **Issues for Determination.**

48. The Plaintiff/Respondent filed her submissions on 6<sup>th</sup> December, 2024 while the 2<sup>nd</sup> Defendant/Applicant and the 1<sup>st</sup> Defendant/Respondent did not file any submissions.
49. The Plaintiff/Respondent submits on the following issues;
  - a. Whether the said parcel of land to with (sic) Kericho/Kiptugumo/1198 is legally owned by the Plaintiff/Respondent.
  - b. Whether the review orders should be confirmed.
  - c. Whether the Defendant/Applicant will suffer damages if the Respondents are not enjoined.
50. The Plaintiff/Respondent submits that she is the registered owner of land parcel No. Kericho/Kiptugumo/1198 which is one of the resultant subdivisions of land parcel No. Kericho/Kiptugumo/890.
51. The Plaintiff/Respondent reiterates the averments in her replying affidavit, relies on Section 26 of the *Land Registration Act*, Article 40 of *the Constitution* of Kenya, the judicial decision of Dr. Joseph Arap Ngok vs Justice Moiwo Ole Keiwua & 5 Others Civil Appeal No. Nai 60 of 1997 and submits that the 2<sup>nd</sup> Defendant/Applicant is not challenging the ownership of the suit parcel.
52. The Plaintiff/Respondent also submits that she is merely asserting her proprietary right to enjoyment of peaceful possession, occupation and use of the suit parcel without interference by any third parties.



53. The Plaintiff/Respondent also submits that the setting aside of the orders issued on 27<sup>th</sup> June, 2023 and 6<sup>th</sup> June, 2024 will greatly prejudice her as she spent a lot of money in order to get her title deed.
54. The Plaintiff/Respondent further submits that she obtained title to the suit parcel by virtue of being a widow to the 2<sup>nd</sup> Defendant/Applicant's father. (sic)
55. The Plaintiff/Respondent relies on Section 13 of the *Environment and Land Court Act* and submits that under the said provision of the law, the Court can issue an injunction in order to safeguard the proprietary rights of a registered owner.
56. With regard to the second issue, the Plaintiff/Respondent relies on Sections 3A, 63(e) & 80 of the *Civil Procedure Act*, Order 45 Rule 1 of the Civil Procedure Rules, the judicial decision of National Bank of Kenya Limited v Ndungu Njau Civil Appeal No. 211 of 1996 (1997) eKLR and submits that the review sought by the 2<sup>nd</sup> Defendant/Applicant will introduce new parties to the suit and she will not be afforded an opportunity to cross examine any evidence produced(sic).
57. The Plaintiff/Respondent submits that there is no error apparent on the face of the record to warrant review of the orders of the Court.
58. The Plaintiff/Respondent relies on the judicial decisions of Muyodi Vs Industrial and Commercial Development Corporation & another [2006] 1 EA 243, Chandrakant Joshibhai Patel vs R [2004] TLR 218 and submits that the 2<sup>nd</sup> Defendant/Applicant filed the application under consideration four (sic) years after the Court delivered its judgement and he is therefore not entitled to orders of review.
59. The Plaintiff/Respondent ends her submissions by urging the Court to dismiss the 2<sup>nd</sup> Defendant/Applicant's application.

#### **Analysis and Determination.**

60. Having considered the 2<sup>nd</sup> Defendant/Applicant's application, the response thereto and the Plaintiff/Respondent's submissions, my view is that the only issue that arises for determination is whether the 2<sup>nd</sup> Defendant/Applicant's application has merit.
61. The 2<sup>nd</sup> Defendant/Applicant is seeking that this Court sets aside the eviction orders issued in the decree dated 27<sup>th</sup> June, 2023 and the order dated 6<sup>th</sup> June, 2024.
62. The 2<sup>nd</sup> Defendant/Applicant contends that he was not served with the pleadings in this matter.
63. The 2<sup>nd</sup> Defendant/Applicant also contends that the suit parcel, land parcel No. Kericho/Kiptugumo/1198 is a resultant subdivision of land parcel No. Kericho/Kiptugumo/890.
64. The 2<sup>nd</sup> Defendant/Applicant further contends that land parcel No. Kericho/Kiptugumo/890 belongs to his father one Kipkerich Arap Chirchir.
65. It is the 2<sup>nd</sup> Defendant/Applicant's contention that the Plaintiff/Respondent is the daughter in law of Kipkerich Arap Chirchir.
66. It is also the 2<sup>nd</sup> Defendant/Applicant's contention that the Plaintiff/Respondent subdivided the said parcel without the consent of the owner.
67. In response, the Plaintiff/Respondent contends that the 2<sup>nd</sup> Defendant/Applicant was served with the pleadings in this matter and he filed a 'Memorandum of Appearance to act in Person' dated 3<sup>rd</sup> July, 2017 and a Statement of Defence bearing the same date.



68. The Plaintiff/Respondent also contends that the 2<sup>nd</sup> Defendant/Applicant later appointed counsel who represented him.
69. The Plaintiff/Respondent further contends that the 2<sup>nd</sup> Defendant/Applicant has always been aware of the present proceedings and he has therefore not made a case for review of the orders of the Court.
70. A perusal of the Court record shows that on 20<sup>th</sup> March, 2017, the 2<sup>nd</sup> Defendant/Applicant filed a Memorandum of Appearance dated 3<sup>rd</sup> March, 2017.
71. The Court record shows that on the same date he filed a Statement of Defence also dated 3<sup>rd</sup> March, 2017. He stated that the suit parcel was family property and that it belonged to his late father one Mathew Chirchir. He prayed that the Court dismisses the Plaintiff/Respondent's case with costs.
72. A Notice of appointment of advocates was filed on 16<sup>th</sup> June, 2017 signed by one Erick Nyadimo Counsel for the Defendants.
73. A further perusal of the Court record shows that on 4<sup>th</sup> October, 2017 a 'Joint Statement of Defence of the Defendants' was filed. It is dated 4<sup>th</sup> October, 2017. It denied the averments in the Plaint and urged the Court to dismiss the Plaintiff/Respondent's case with costs.
74. A perusal of the proceedings shows that one Mr. Nyadimo appeared for the Defendants.
75. The Court of Appeal in *Shanzu Investments Ltd v Commissioner of Lands* [1993] eKLR held as follows;

“The Court has a very wide discretion under the order and rule and there are no limits and restrictions on the discretion of the judge except that if the judgment is varied must be done on terms that are just: *Patel v EA Cargo Handling Services Ltd*, (1974) EA 75, 76B, C (CA-K). The jurisdiction to vary judgment being a judicial discretion should be exercised judicially; and, as is often said, whether judicial discretion should be exercised or withheld in a party's favour, depends, on a large measure, on the facts of each particular case.” (Emphasis mine)

76. It is evident from the Court record that the 2<sup>nd</sup> Defendant/Applicant entered appearance and filed a Statement of Defence.
77. It is also evident that he together with the 1<sup>st</sup> Defendant/Respondent appointed Counsel who represented them in the course of the proceedings.
78. That being the case, the 2<sup>nd</sup> Defendant/Applicant has not laid a basis upon which this Court should set aside the eviction orders in the decree dated 27<sup>th</sup> June, 2023 and the Court order dated 6<sup>th</sup> June, 2024.
79. I have noted that the Plaintiff/Respondent had submitted on the question whether the Court should review its orders. The 2<sup>nd</sup> Defendant/Applicant in prayer “c” of the application seeks the following order;

That pending the hearing and determination of the Applicant (sic) application for review of the judgement of the Honourable Court dated 15<sup>th</sup> June, 2023 the Honourable Court be pleased to set aside its orders dated 6<sup>th</sup> June, 2024 and make an order for maintenance of the current status quo.



80. Prayer (c) is not particularly intelligible but I want to imagine that the the 2<sup>nd</sup> Defendant/Applicant seeks that the Court reviews its judgement delivered on 15<sup>th</sup> June, 2023 and the order dated 6<sup>th</sup> June, 2024 pending the hearing and determination of the application.
81. It is my view that the appropriate relief was for the 2<sup>nd</sup> Defendant/Applicant to seek for orders of review without limiting it to the hearing and determination of the application.
82. In the judicial decision of Issa Ahmed & 15 others vs Mohamed Al-Sawae [2021] eKLR the Court held as follows;
- “The object and purpose of pleadings is to ensure that litigants come to Court with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the Court for its consideration. The pleadings are meant to give each side intimation of the case of the other so that it may be met, to enable Courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take. A Court cannot assume or infer a case by referring to a stray sentence here and a stray sentence there in the pleading. A Court cannot exercise its judicial position to grant a relief which is not even sought by parties in their pleadings as granting the same would lead to a miscarriage of justice.”
83. This Court will not therefore consider whether or not it can review its judgement delivered on 15<sup>th</sup> June, 2023 and the order dated 6<sup>th</sup> June, 2024 as the said order was sought pending the hearing and determination of the application under consideration. In any event, the Applicant has not made averments on circumstances pursuant to which this court may review its decision.

### **Disposition**

84. The upshot of the foregoing is that the 2<sup>nd</sup> Defendant/Applicant’s application dated 9<sup>th</sup> July, 2024 lacks merit and it is hereby dismissed with costs.
85. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 3<sup>RD</sup> DAY OF JULY, 2025.**

**L. A. OMOLLO**

**JUDGE.**

In the presence of DIVISION - -

Parties. Absent

Court Assistant; Mr. Joseph Makori.

