



REPUBLIC OF KENYA



**KENYA LAW**  
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**Odera & 6 others (Suing on their own and on behalf of all other members of the Kogony Community claiming registerable interests in the Land known as C/18 Scheme) v Akinyi & 5 others; Oim & 18 others (Interested Party); Otieno & 3 others (Applicant) (Environment and Land Case 146 of 2012) [2025] KEELC 5233 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5233 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT AND LAND CASE 146 OF 2012**

**SO OKONG'O, J**

**JULY 10, 2025**

**BETWEEN**

**CHRISTABEL ACHIENG ODERA ..... 1<sup>ST</sup> PLAINTIFF  
WILSON OGOLA ODENY ..... 2<sup>ND</sup> PLAINTIFF  
CARRILUS OLANDO ODARI ..... 3<sup>RD</sup> PLAINTIFF  
JOSEPH OMOLLO ..... 4<sup>TH</sup> PLAINTIFF  
FLORENCE ATIENO ADERA ..... 5<sup>TH</sup> PLAINTIFF  
JOHN OKONGO OGENDO ..... 6<sup>TH</sup> PLAINTIFF  
MICHAEL JUMA ADEDE ..... 7<sup>TH</sup> PLAINTIFF**

**SUING ON THEIR OWN AND ON BEHALF OF ALL OTHER MEMBERS OF  
THE KOGONY COMMUNITY CLAIMING REGISTERABLE INTERESTS IN  
THE LAND KNOWN AS C/18 SCHEME**

**AND**

**CHRISTOPHER JUMA AKINYI ..... 1<sup>ST</sup> DEFENDANT  
AUGUSTINE GENGA ONDINGO ..... 2<sup>ND</sup> DEFENDANT  
VITALIS OURU AKINYI ..... 3<sup>RD</sup> DEFENDANT  
JANE KAMBAGA ..... 4<sup>TH</sup> DEFENDANT  
COUNTY LANDS REGISTRAR ..... 5<sup>TH</sup> DEFENDANT  
HON ATTORNEY GENERA ..... 6<sup>TH</sup> DEFENDANT**

**AND**



DAVID ODERA OIM & 18 OTHERS ..... INTERESTED PARTY

AND

GEORGE GN OTIENO ..... APPLICANT

WILLIAM AMAYI ..... APPLICANT

RICHARD LEONARD MASIME OGOLA ..... APPLICANT

JAMES MASWACHE ..... APPLICANT

*(Suing on their own and on behalf of all other members of the Kogony  
Community claiming registerable interests in the land known as C/18 Scheme)*

## RULING

### Background.

1. I had set out the full facts of this case in my ruling delivered herein on 24<sup>th</sup> April 2024. In their further amended plaint dated 8<sup>th</sup> November 2019, the Plaintiffs averred that they were members of the Kogony Community residing within Kogony Sub-Location. The Plaintiffs averred that they were entitled to all that parcel of land lying between Kogony and Kanyakwar adjudication sections which had been registered and was contained in Survey Map No.18. The Plaintiffs averred that the said parcel of land (hereinafter referred to only as “the suit property”) was referred to in some official records as Parcel Nos. Kisumu /Kogony/5XX0-6XX2.
2. The Plaintiffs averred that in 1978, the suit property was inadvertently included in the Kenya Gazette Notice through which part of the land in Kanyakwar had been acquired compulsorily by the government. The Plaintiffs averred that this mistake was noted and corrected. The Plaintiffs averred that the suit property was not immediately adjudicated and remained as an open space between the Kogony and Kanyakwar adjudication sections. The Plaintiffs averred that the suit property was neither demarcated nor surveyed. The Plaintiffs averred that the suit property was community land and was inherited by the Plaintiffs from their ancestors. The Plaintiffs averred that in 2011, a decision was made by the District Land Adjudication and Settlement Officer that the suit property should be adjudicated and returned to the original families that owned it. The Plaintiffs averred that they elected officials to carry out this exercise on their behalf. The Plaintiffs averred that among the persons who were elected for that purpose were the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.
3. The Plaintiffs averred that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants assured the Plaintiffs that the suit property would be adjudicated and registered in the names of the Plaintiffs. The Plaintiffs averred that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, in breach of their duties, colluded with the 4<sup>th</sup> Defendant and the District Land Registrar, Kisumu and caused all land parcels that were created from the suit property to be registered in the names of a few individuals including the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. The Plaintiffs averred further that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants fraudulently caused some of the parcels of land created from the suit property to be registered in the names of persons who were not members of the Kogony community. The Plaintiffs sought judgment against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants for:

1. General Damages;



2. A declaration that the suit property comprising of but not limited to, land parcel Nos. Kisumu/Kogony/5XX0-6XX2 be declared the Plaintiffs' ancestral land, and that the same should revert to the Plaintiffs;
  3. An order that all the titles arising from the suit property which were issued to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants and /or any other third parties be nullified and cancelled;
  4. An order that all the remaining parcels of land forming part of the suit property, which had not been transferred or alienated, be equitably and justly shared between (and distributed to) all the beneficiaries entitled to the same, including the Plaintiffs;
  5. An order that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants do render true and accurate accounts of their dealings with all the parcels of land forming part of the suit property and further that they do jointly and severally account to all the Plaintiffs for all the proceeds of the sale of any of the parcels which they had sold out of the suit property; and
  6. Costs of this suit plus interest thereon.
4. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants filed a joint amended statement of defence on 11<sup>th</sup> July 2017 in which they denied the allegations made against them by the Plaintiffs. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants denied that they colluded with the 4<sup>th</sup> Defendant and the District Land Registrar, Kisumu, to register the parcels of land that arose from the adjudication and demarcation of the suit property in the names of a few individuals, including them. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants denied that there existed a fiduciary relationship between them and the Plaintiffs. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants denied having breached such duty as alleged. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants also denied the particulars of fraud pleaded against them in the amended plaint. The 5<sup>th</sup> and 6<sup>th</sup> Defendants filed a joint statement of defence on 10<sup>th</sup> January 2020. The 5<sup>th</sup> and 6<sup>th</sup> Defendants denied the Plaintiffs' claim in its entirety.
  5. The matter was heard and a judgment delivered on 18<sup>th</sup> March 2022. The court found that the suit property was community land and that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants were appointed by the members of the Kogony Community to act on their behalf in ensuring that the suit property was demarcated, registered and titles issued in the names of the community members. The court found that the Defendants fraudulently registered the parcels of land that were created from the suit property in the names of persons who were not members of the community and had sold some of the parcels to third parties. Based on the said findings, the court entered judgment for the Plaintiffs against the Defendants for:
    1. General damages of Kshs. 10,000,000/-.
    2. A declaration that all that block of land registered and comprised in Map Sheet or Diagram No. 18 and which was referred to as Kogony C-18 Scheme, and comprising, but not limited to, land parcel Nos. Kisumu/Kogony/5XX0-6XX2 was the Plaintiffs' ancestral land, and the same should revert to the Plaintiffs.
    3. An order that all the title deeds forming part of the said Kogony C-18 Scheme and which were issued to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants and /or any other third parties be nullified and cancelled.
    4. An order that all the remaining parcels of land forming part of the said Kogony C-18 Scheme, which had not been transferred or alienated, be equitably and justly shared between (and distributed to) all the beneficiaries entitled to the same, including the Plaintiffs.



5. An order that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants do render true and accurate accounts of their dealings with all the parcels of land forming part of Kogony C-18 and further that they do jointly and severally account to all the Plaintiffs for all the proceeds of the sale of any of the parcels which they had sold out of the said Kogony C-18 Scheme.
  6. Costs of this suit plus interest thereon.
6. On 21<sup>st</sup> September 2023, the Applicants brought an application by way of Notice of Motion dated 2<sup>nd</sup> September 2023 under Sections 1A, 1B, 3, 3A and 63(e) of the *Civil Procedure Act* and Order 1 Rule 10(2), Order 22 Rule 22 and Order 51 Rules 1 and 15 of the Civil Procedure Rules seeking the following orders;
1. That the judgment of this court dated 18<sup>th</sup> March 2022, together with all consequential proceedings, be set aside and the hearing of the suit do commence afresh.
  2. That the Applicants be joined in the proceedings as the 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> Defendants and the plaint to be amended accordingly and be served upon all the parties.
  3. The costs of the application be provided for.
7. In summary, the Applicants contended that they were the bona fide registered owners respectively of the parcels of land known as Kisumu/Kogony/5XX2, 5XX3, 5XX6, 5XX5 and 5XX5 located within Registry Index Map Sheet No. 18, Kogony Registration Section, Kisumu County (hereinafter together referred to as “the Applicants’ land” and individually as “Plot Nos. 5XX2, 5XX3, 5XX6, 5XX5 and 5XX5”). The Applicants averred that they acquired the Applicants’ land innocently through purchase before the institution of this suit and without notice of any dispute over the same. The Applicants averred that they were not aware of the existence of this suit until mid-2023 when they came across a judgment delivered in this suit in Kisumu J.R No. 4 of 2023, which was mentioned together with ELC J.R No. 1 of 2023 in which the Applicants were parties. The Applicants averred that the said two judicial review applications were brought to challenge the decision of the Kisumu Land Registrar to cancel the titles of the Applicants, which originated from Registry Index Map Sheet No. 18, Kogony Registration Section, Kisumu County, which was the subject of this suit. The Applicants averred that it was in the said proceedings that they came across the judgment that was made in this suit, which cancelled their titles. The Applicants averred that they were never parties to this suit and were not made parties to the suit before the said judgment of 18<sup>th</sup> March 2022 that cancelled their titles was delivered. The Applicants averred that since they were the registered proprietors of the Applicants’ land before this suit was filed, they should have been made parties to the suit so that they could be heard before the prejudicial orders were made against them.
8. The Applicants averred that in proceeding with the suit in the absence of the registered owners of the Applicants’ land and having the titles for the said parcels of land cancelled without hearing the Applicants, violated the rules of natural justice and the rights of the Applicants guaranteed under Article 47 of *the Constitution*. The Applicants averred that the judgment of the court delivered herein needed to be set aside, the Applicants joined in the suit, and the hearing of the suit commenced afresh. The Applicants annexed several documents in their affidavit in support of the application.
9. The Applicants’ application was opposed by the Plaintiffs through a replying affidavit sworn by the 1<sup>st</sup> Plaintiff on 23<sup>rd</sup> January 2024. The Plaintiffs averred that the original owner of land parcel No. Kisumu/Kogony/ 2XX9, one, John Okeyo Donde subdivided the said parcel of land into two portions, namely, Kisumu/Kogony/ 4616 and 4XX7. The Applicants averred that the said John Okeyo Donde sold parcel No. Kisumu/Kogony/ 4XX7 to the 1<sup>st</sup> Defendant. The Plaintiffs averred that the



1<sup>st</sup> Defendant subdivided parcel No. Kisumu/Kogony/ 4XX7 into 29 portions among them Kisumu/Kogony/ 5XX2, 5XX3, 5XX6, 5XX5 and 5XX5(the Applicants' land) claimed by the Applicants. The Plaintiffs averred that the Applicants' land parcels were subdivisions of land parcel No. Kisumu/Kogony/ 4XX7 originally owned by the 1<sup>st</sup> Defendant. The Applicants averred that the said parcels of land had nothing to do with the ancestral land that was being claimed by the Kogony Community, which had not been surveyed, demarcated and adjudicated. The Plaintiffs averred that the purported subdivision of land parcel No. Kisumu/Kogony/ 2XX9, which gave rise to the Applicants' land, was fraudulent, and the court found as much in the impugned judgment. The Plaintiffs averred that the parcel of land that was the subject of this suit had no relationship with the Applicants' land, which was initially owned by the 1<sup>st</sup> Defendant. The Plaintiffs averred that no title had been processed as of 2011 for the community land that was the subject of this suit, and as such, the titles held by the Applicants that were issued in 2010 must have originated from another parcel of land separate and distinct from the community land. The Plaintiffs averred that in any event, the Applicants were all along aware of the existence of this suit since the 1<sup>st</sup> Defendant, who was the original owner of the Applicants' land, was a party to the suit. The Plaintiffs annexed to their affidavit several documents.

10. The court considered the Applicants' application and delivered a ruling on 24<sup>th</sup> April 2024 allowing the application in part. The court noted that from the evidence that was placed before the court by the Applicants, Plot No. 5XX2 was registered in the name of the 4<sup>th</sup> Applicant, Plot No. 5XX3 in the name of the 2<sup>nd</sup> Applicant, Plot No. 5XX6 in the name of the 4<sup>th</sup> Applicant, Plot No. 5XX5 in the name of the 5<sup>th</sup> Applicant while Plot No. 5XX5 was registered in the name of one, Nereah Awino Ochieng who was not a party to the application before the court. The court noted further that the said parcels of land were registered in the names of the said Applicants and Nereah Awino Ochieng on 9<sup>th</sup> April 2010, 10<sup>th</sup> December 2010, 10<sup>th</sup> December 2010, 22<sup>nd</sup> December 2010 and 7<sup>th</sup> June 2011 respectively before this suit was filed in 2012 and that they were all located within Registry Index Map Sheet No. 18. The court observed that in the judgment of this court that was sought to be set aside, the court declared that all land comprised in the Registry Index Map Sheet No. 18 which included land parcel Nos. Kisumu/Kogony/5XX0 to 6XX2 was the Plaintiffs' ancestral land, and that the same should revert to the Plaintiffs. The court also cancelled all the title deeds that had been issued to the Defendants in the suit and other third parties in respect of land that was falling within the Registry Index Map Sheet No. 18.
11. The court found that the Applicants' land was affected by the impugned judgment in that, in the impugned judgment, the court declared that the Applicants' land belonged to the Plaintiffs and the title deeds held by the Applicants were cancelled. The court found that since the Plaintiffs brought this suit after the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Applicants had already been registered as the proprietors of their respective parcels of land, the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Applicants had a right to be heard before their parcels of land were declared to belong to the Plaintiffs and their title deeds cancelled. The court found that the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Applicants were condemned unheard in violation of the rules of natural justice and that they had made a case for the setting aside of the impugned judgment to the extent that affected their rights.
12. As for the 1<sup>st</sup> Applicant, the court stated that what the 1<sup>st</sup> Applicant had placed before the court was an agreement of sale between the 1<sup>st</sup> Applicant and the 4<sup>th</sup> Defendant. The court found that there was no evidence that Plot No. 5XX2 was transferred and registered in the name of the 1<sup>st</sup> Applicant. The court found that the Plaintiffs could not have known that the 1<sup>st</sup> Applicant had any interest in the property to warrant his joinder to the suit, considering that the 4<sup>th</sup> Defendant, who was the registered owner of the property, was already a party to the suit. Concerning the 3<sup>rd</sup> Applicant, the court found that there was no material before the court showing that the 3<sup>rd</sup> Applicant had an interest in any of the parcels of land the subject of the application that was before the court.



13. In conclusion, the court found that the applicant's application had succeeded only in respect of the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Applicants. On the appropriate orders to make, the court declined to set aside the entire judgment of the court. The court noted that the Defendants and the Interested Parties who had participated in the hearing of the suit and were bound by the said judgment had not challenged the same before the court. The court found that it would not be appropriate to disturb the judgment as far as the rights of the Plaintiffs and the Defendants settled by the said judgment were concerned. In the end, the court reviewed and varied the judgment delivered on 18<sup>th</sup> March 2022 and struck out there from any reference to the land parcel Nos. Kisumu/Kogony/5XX3, 5XX6, and 5XX5 owned by the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Applicants who were not parties to the suit. The court gave either party (the Plaintiffs or the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants) the liberty to institute a fresh suit for the determination of any pending dispute between them arising from the ownership of the said parcels of land.

### **The application before the court**

14. What is now before the court is the Notice of Motion application dated 8<sup>th</sup> July 2024 brought by the 1<sup>st</sup> and 3<sup>rd</sup> Applicants under Section 1A, 1B, 63(e), 80(a) and 99 of the *Civil Procedure Act* and Order 45 Rules 1(a) of the Civil Procedure Rules. In the application, the 1<sup>st</sup> and 3<sup>rd</sup> Applicants have sought the following orders;
1. A review of the order made on 24<sup>th</sup> April 2024, so that the limb thereof striking out any reference in the judgment dated 18<sup>th</sup> March 2020, to the parcels of land owned by the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Applicants also apply to the land parcels, Kisumu/Kogony/5XX2 and Kisumu/Kogony/5XX6 owned by the 1<sup>st</sup> and 3<sup>rd</sup> Applicants' respectively.
  2. The costs of the application.
15. The application that was supported by the affidavit of George G.N.Otieno sworn on 8<sup>th</sup> July 2024, was brought on several grounds. In summary, the 1<sup>st</sup> and 2<sup>nd</sup> Applicants (Applicants) averred that the court had declined to grant them the orders that were granted to the other applicants in the ruling delivered on 24<sup>th</sup> April 2024 because they had not demonstrated that they were the registered owners of the land parcels, Kisumu/Kogony/5XX2 and Kisumu/Kogony/5XX6. The Applicants averred that, owing to a mix-up of documents in their advocates' office at the time of filing the application dated 2<sup>nd</sup> September 2023, the 1<sup>st</sup> and 3<sup>rd</sup> Applicants' (Applicants) title deeds for Kisumu/Kogony/5XX2 and Kisumu/Kogony/5XX6 were not annexed to the affidavit in support of the application. The Applicants averred that they had annexed the said title deeds, which were omitted in the first application, to the affidavit in support of the current application to demonstrate that they became the owners of Kisumu/Kogony/5XX2 and Kisumu/Kogony/5XX6 before the Plaintiffs' suit was filed. The Applicants averred that they had established valid and proper grounds for the review sought.
16. The Plaintiffs opposed the application through the grounds of opposition dated 24<sup>th</sup> July 2024 and a replying affidavit sworn by the 1<sup>st</sup> Plaintiff on 11<sup>th</sup> October 2024. The Plaintiffs contended that the Applicants had not satisfied the conditions for review. The Plaintiffs averred that the Applicants had not established the discovery of new and important matter or evidence which was not within their knowledge, or they could not produce when the first application was made. The Plaintiffs averred further that the Applicants had not demonstrated either that there was an error apparent on the face of the record of the court ruling sought to be reviewed or that there was sufficient reason to review the ruling. The Plaintiffs averred that in any event, the application had been rendered superfluous owing to the decision that was made by this court in ELC JR. No. E001 of 2023, ELC JR. No. E004 of 2023 and ELC JR. No. E005 of 2023.



17. The application was argued by way of written submissions. The Applicants filed submissions dated 3<sup>rd</sup> November 2024, while the Plaintiffs/Respondents filed submissions dated 11<sup>th</sup> February 2025. I have considered the application together with the affidavit filed in support thereof. I have also considered the grounds of opposition filed by the Plaintiffs in opposition to the application. Finally, I have considered the submissions by the advocates for the parties. The only issue arising for determination in the application before me is whether a valid basis has been laid to justify a review of the court order made herein on 24<sup>th</sup> April 2024. The court's power to review its orders and decrees is provided for in Section 80 of the Civil Procedure Act, under which the Applicants' application has been brought. Section 80 of the Civil Procedure Act provides as follows:

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.”

18. Order 45 of the Civil Procedure Rules, also invoked by the Applicants, lists specific grounds upon which an application for review can be made as follows;

- a. Where there is a new and important matter or evidence which after exercise of due diligence was not within the knowledge of an applicant at the time the decree was passed;
- b. Where there is a mistake or error apparent on the face of the record; and
- c. For any other sufficient reason

19. The Court of Appeal set out the requirements to be satisfied by an applicant seeking review in *Francis Origo & another v. Jacob Kumali Mungala, Eldoret* CA No. 149 of 2001[2005]eKLR as follows:

...it is clear that an applicant has to show that there has been discovery of new and important matter or evidence which after due diligence, was not within his knowledge or could not be produced at that time or he must show that there is some mistake or error apparent on the face of the record or that there was any other sufficient reason. And most importantly, the applicant must make the application for review without unreasonable delay.”

20. Similarly, in *Kenya Power & Lighting Company Limited v Benzene Holdings Limited t/a Wyco Paints, Nairobi* C.A Civil Appeal No. 132 & 133 of 2014, [2016] KECA 73 (KLR), the requirements were set out as follows:

To qualify for a review there are stringent requirements to be met. For instance the applicant must demonstrate that as a matter of right he can appeal but has not exercised that option; that no appeal lies from the decree with which he is dissatisfied; or that he has discovered a new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced when the order was made; or that there is a mistake or error apparent on the face of the record; or that there are sufficient reasons to warrant the review. It is also a requirement that the application for review must be brought without unreasonable delay.”



21. The scope of the court’s jurisdiction to review its orders was defined in *John Kamau Ruhangi v Kenya Reinsurance Corporation*, Civil Appeal No. 208 of 2006, [2012]eKLR as follows:

It is important to bear in mind that Order 44 Rule 1 of the Civil Procedure Rules sets out the purview of the review jurisdiction. A point outside that purview is not a ground for review. A point which may be a good ground of appeal like an erroneous view of law or evidence is also not a ground for review. That a court reached an erroneous conclusion because it proceeded on an incorrect exposition of the law or misconstrued a statute or other provision of law is no ground of review. All these are grounds of appeal.”

22. The Applicants did not indicate in their application the basis or ground upon which the application was made. I will take it that the application was based on “any other sufficient reason”. Sufficient cause was defined in *Attorney General v. Law Society of Kenya & another* [2017]eKLR as follows:

Sufficient cause or good cause in law means:

...the burden placed on a litigant (usually by court rule or order) to show why a request should be granted or an action excused. See BLACK’S LAW DICTIONARY, 9th Edition, page 251.

Sufficient cause must therefore be rational, plausible, logical, convincing, reasonable and truthful. It should not be an explanation that leaves doubts in a judge’s mind. The explanation should not leave unexplained gaps in the sequence of events.”

23. The 1<sup>st</sup> and 3<sup>rd</sup> Applicants (the Applicants) were parties to the application dated 2<sup>nd</sup> September 2023, which was allowed by the court only in respect of the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Applicants. As correctly submitted by the Applicants, the application was not allowed as concerns the Applicants because the Applicants did not establish that they owned land parcels, Kisumu/Kogony/5XX2 and Kisumu/Kogony/5XX6, which they had claimed to be the registered owners. The 1<sup>st</sup> and 3<sup>rd</sup> Applicants did not place before the court any evidence showing that the two parcels of land were registered in their names. The Applicants have contended that evidence of their titles to the said parcels of land was available, but the same was not produced in court because of the mix-up of documents in their advocates’ office. The Applicants stated in their affidavit in support of the application that they had annexed copies of the title deeds for Kisumu/Kogony/5XX2 and Kisumu/Kogony/5XX5, which were omitted in the application dated 2<sup>nd</sup> September 2023, as “GGNO-2” and “GGNO-3”. These two annexures are missing from the affidavit of George G.N. Otieno sworn on 8<sup>th</sup> July 2024. The affidavit only has annexure “GGNO-1”, which is the ruling of the court made on 24<sup>th</sup> April 2024. This means that I have not had sight of the title deeds for Kisumu/Kogony/5XX2 and Kisumu/Kogony/5XX5. I am therefore unable to say that the 1<sup>st</sup> and 3<sup>rd</sup> Applicants have now established that they own the two parcels of land. The court is in the same position it was when it delivered the ruling of 24<sup>th</sup> April 2024.
24. For the foregoing reasons, I am not satisfied that the applicants have shown sufficient cause to warrant a review of the order made herein on 24<sup>th</sup> April 2024.
25. Before I conclude on the application, I wish to comment on the submissions made by the Plaintiffs/ Respondents to the effect that the decision of this court in ELC JR No. E001 of 2023, ELC JR No. E005 of 2023 and ELC JR No. E004 of 2023 had rendered the Applicants’ application herein otiose or superfluous in that the court had confirmed that the titles held by the Applicants were acquired fraudulently, and as such, the same should be cancelled. I do not agree with these submissions.



26. In ELC JR. No. E001 of 2023, the court stated as follows in part:

From the material placed before me by the parties, there is prima facie evidence that the suit properties were created irregularly and fraudulently. I say prima facie because the issues raised by the parties touch on the legality of the titles held by the Applicants in respect of the suit properties which can only be determined with finality in a civil suit. This court cannot determine with finality in a judicial review application whether the suit properties were fraudulently created as alleged by the Respondents.”

27. In ELC JR. No. E005 of 2023, the court stated as follows in part:

As I found with regard to the issues raised in Judicial Review Application No. E001 OF 2023, the issues raised in the present application touch on the legality of the titles held by the Applicants and other persons who own land which are said to be situated outside Kisumu Kanyakwar B Registration Section Registry Index Map/Diagram Sheet Nos. 2 and 3, and Kisumu Kogony Registration Section Registry Index Map/Diagram Sheet No. 18. The issues regarding validity of a title to land or ownership of land cannot be determined on a judicial review application.”

28. In ELC JR. No. E004 of 2023, the court stated as follows in part:

Since the suit property was not surveyed, its measurement is unknown. Christopher Juma Akinyi in his testimony in Kisumu ELC No. 146 of 2012 told the court that the suit property measured about 8Ha. As mentioned earlier, the parcels of land that resulted from the subdivisions of Kisumu/Kogony/4XX7 which was owned by Christopher Akinyi Juma measured a total of over 38Ha. This means that the total size of the parcels of land that resulted from the subdivision of Kisumu/ Kogony/4XX7 exceeded not only the measurement of Kisumu/Kogony/4XX7 but also the size of the suit property which was described as a small strip between Kogony and Kanyakwar Registration Sections. There is therefore a possibility that the fraudulent subdivision of Kisumu/Kogony/4XX7 encroached on the land that was compulsorily acquired by the Government for the expansion of Kisumu Municipality as claimed by the Respondents herein. In their replying affidavit sworn on 14<sup>th</sup> September 2023, the Respondents have mentioned a total of 318 parcels of land that resulted from the subdivision of Kisumu/Kogony/4XX7 which are said to have encroached on the land that was compulsorily acquired by the Government for the expansion of Kisumu Municipality.

Due to lack of survey of the suit property, the court is unable to say which parcels of land that resulted from the illegal and fraudulent subdivision of Kisumu/Kogony/4XX7 form part of the suit property and which ones do not. The court is also unable to determine the number of these parcels of land which have overlapped on the land said to have been acquired by the Government for the expansion of Kisumu Municipality. Such a determination can only be made in a civil suit filed for that purpose.”

29. It is clear from the foregoing that this court did not determine with finality the legality or otherwise of the titles for the properties the subject of the present application. The court did not, therefore, take away the rights of the Applicants in the present application to be heard in Kisumu ELC No. 146 of 2012 before a prejudicial decision was made against them.



## **Conclusion**

30. In conclusion, I find no merit in the Notice of Motion dated 8<sup>th</sup> July 2024 by the 1<sup>st</sup> and 3<sup>rd</sup> Applicants. The application is dismissed with costs to the Plaintiffs.

**DELIVERED AND SIGNED AT KISUMU ON THIS 10<sup>TH</sup> DAY OF JULY 2025**

**S. OKONG'O**

**JUDGE**

**RULING DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO  
CONFERENCING PLATFORM IN THE PRESENCE OF:**

Mr. Nyakiangana for the Plaintiffs

N/A for the Defendants

Ms. Okaka h/b for Mr. Yogo for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants

N/A for the Interested Parties

Mr. Odeny for the Applicants

Ms. J. Omondi-Court Assistant

