



REPUBLIC OF KENYA



**KENYA LAW**  
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**Runya & 3 others v Mugo & 6 others (Environment and Land Case 17 of 2020  
& Environmental and Land Originating Summons 15 & 122 of 2021  
(Consolidated)) [2025] KEELC 5190 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5190 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MOMBASA**

**ENVIRONMENT AND LAND CASE 17 OF 2020 & ENVIRONMENTAL AND  
LAND ORIGINATING SUMMONS 15 & 122 OF 2021 (CONSOLIDATED)**

**JO OLOLA, J**

**JULY 10, 2025**

**BETWEEN**

**FITINA RUNYA ..... 1<sup>ST</sup> PLAINTIFF**  
**NG'OA MWACHOMBO ..... 2<sup>ND</sup> PLAINTIFF**  
**CHARO FIKIRI ..... 3<sup>RD</sup> PLAINTIFF**  
**YUSUF MWANGIRA ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**DAVID MUCHIRI MUGO ..... 1<sup>ST</sup> DEFENDANT**  
**ATHMAN SWALEH ..... 2<sup>ND</sup> DEFENDANT**  
**COUNTY COMMANDANT MOMBASA COUNTY ..... 3<sup>RD</sup> DEFENDANT**  
**O.C.S BAMBURI POLICE STATION ..... 4<sup>TH</sup> DEFENDANT**  
**DEPUTY COUNTY COMMISSIONER KISAUNI ..... 5<sup>TH</sup> DEFENDANT**  
**O.C.S KIEMBENI POLICE STATION ..... 6<sup>TH</sup> DEFENDANT**  
**O.C.P.D KISAUNI ..... 7<sup>TH</sup> DEFENDANT**

**RULING**

1. By the Notice of Motion dated 31<sup>st</sup> January, 2025, Lilian Sindi and 136 Others (the Interested Parties) pray for an order that the Court be pleased to review, set aside or vary its orders issued on 18<sup>th</sup> December, 2024 and reinstate its earlier orders issued on 23<sup>rd</sup> September, 2024.



2. The application which is supported by an Affidavit sworn by the 1<sup>st</sup> Interested Party – Lilian Sindi, is premised on the grounds that:
  - a. The Interested Parties are aggrieved with the decision of the Court made on 18<sup>th</sup> December, 2024;
  - b. The Interested Parties had already filed all the compliance documents and served the Respondents with the same but the documents were not seen by the Court at the time of the delivery of the Ruling;
  - c. The said compliance documents were filed electronically; and
  - d. It is in the interest of justice that the same be allowed and the Interested Parties be allowed to defend the suit.
3. David Muchiri Mugo (the 1<sup>st</sup> Defendant) is opposed to the application. In his Replying Affidavit sworn on 13<sup>th</sup> February, 2025, the 1<sup>st</sup> Defendant avers that the Interested Parties applied to be joined in the suit long after judgment had been delivered in his favour.
4. The 1<sup>st</sup> Defendant further avers that the court allowed the Interested Parties’ application to set aside the judgment on a number of conditions which conditions the Interested Parties subsequently failed to comply with. The 1<sup>st</sup> Defendant asserts that the application before the court is incompetent and bad in law as the Applicants are no longer parties herein and have no locus standi to file the same.
5. I have carefully perused and considered both the application as well as the response thereto. I have similarly considered the submissions placed before the court by the Learned Advocates representing the parties herein.
6. By their application before the Court, the Applicants herein pray for an order that the court be pleased to review, set aside or vary its orders issued on 18<sup>th</sup> December, 2024 and reinstate the earlier orders issued on 23<sup>rd</sup> September, 2024.
7. Section 80 of the *Civil Procedure Act*, Cap 21 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.”
8. On the other hand, Order 45 Rule 1 of the Civil Procedure Rules, 2010 provides as follows:

“ 1.

  - (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.”

9. In *Parliamentary Service Commission –vs- Martin Nyaga Wambora & Others* (2018) eKLR, the Supreme Court laid out the principles for consideration in an application such as the one before this court as follows:

“(31) Consequently, drawing from the case law above, particularly *Mbogo and Another v Shah*, we lay down the following as guiding principles for application(s) for review of a decision of the Court made in exercise of discretion as follows:

- i. A review of exercise of discretion is not as a matter of course to be undertaken in all decisions taken by a Limited Bench of this Court;
- ii. Review of exercise of discretion is not a right; but an equitable remedy which calls for a basis to be laid by the applicant to the satisfaction of the Court;
- iii. An application for review of exercise of discretion is not an appeal or a chance for the applicant to re-argue his/her application;
- iv. In an application for review of exercise of discretion, the applicant has to demonstrate, to the satisfaction of the Court, how the Court erred in the exercise of its discretion or exercised it whimsically;
- v. During such review application, in focus is the decision of the Court and not the merit of the substantive motion subject of the decision under review;
- vi. The applicant has to satisfactorily demonstrate that the judge(s) misdirected themselves in exercise discretion and:
  - a. as a result, a wrong decision was arrived at; or
  - b. it is manifest from the decision as a whole that the judge has been clearly wrong and as a result, there has been an apparent injustice.”



10. Considering a similar matter in National Bank of Kenya –vs- Ndung’u Njau, Nairobi C.A. No. 2111 of 1996, the Court of Appeal 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 the court proceeded on an incorrect exposition of the law.”

11. In the matter before me, the Applicants assert that the orders made by this Court on 18<sup>th</sup> December, 2024 were made in error as the Applicants had complied with the conditions earlier on imposed by the court. It is their case that they had complied by filing their documents electronically but the court did not see the same due to failure of the Court Assistant to place the same on the court file.

12. From a perusal of the record herein it is apparent that the four (4) Plaintiffs herein did institute this suit against the two Defendants on 7<sup>th</sup> February, 2020. Upon being served with the Court papers, the 1<sup>st</sup> Defendant filed a Statement of Defence and Counterclaim dated 24<sup>th</sup> February, 2022. As it turned out, the Plaintiffs’ suit was dismissed on 31<sup>st</sup> October, 2022 whereupon the court proceeded to hear the 1<sup>st</sup> Defendant’s Counterclaim. On 2<sup>nd</sup> February, 2024, Judgment was delivered in favour of the 1<sup>st</sup> Defendant as sought in the Counterclaim.

13. Some three (3) months later and by a Notice of Motion application dated 6<sup>th</sup> May, 2024, the Applicants herein sought to set aside the judgment and to be enjoined in the suit as Interested Parties. That application was objected to by the 1<sup>st</sup> Defendant. Having considered both the application and the objection thereto, the Honourable Justice L. Naikuni then seized of the matter in a Ruling delivered on 23<sup>rd</sup> September, 2024 allowed the Applicants’ application and set aside the judgment on condition that the Applicants would file the necessary pleadings together with their documents and witness statements within 21 days. In addition, the Applicants were required to pay the 1<sup>st</sup> Defendant the sum of Kshs. 50,000/= within 14 days from the date of the Ruling.

14. On 4<sup>th</sup> December, 2024 when the matter came up for hearing, Mr. Mutisya, Learned Counsel for the 1<sup>st</sup> Defendant objected to the hearing on the ground that the Applicants herein had not complied with the conditions that were set by the Court in its ruling of 23<sup>rd</sup> September, 2024. The Court Record captures Mr. Mkan, the Learned Counsel for the Applicants responding as follows:

“Mr. Mkan:

My client was unable to pay the money. We wrote the letter to my colleague.

We have now complied by filing documents today 4.12.2024.

We have not seen the notice of objection.”

15. After hearing the parties, the Learned Judge adjourned the hearing and retired to make a considered Ruling on the objection. In his Ruling delivered on 18<sup>th</sup> December, 2024, the Learned Judge did find that the Applicants had failed, neglected and/or refused to abide by the conditions prescribed in the Ruling. Accordingly, the Learned Judge did set aside the Ruling and reinstated the Judgment in favour of the 1<sup>st</sup> Defendant.

16. Having considered the application before me, I was unable to find any new important matter that was not within the knowledge of the Applicants when the matter came up for hearing on 4<sup>th</sup> December,



2024. Nor was I able to discern any error apparent on the face of the record to warrant an order of review.

17. From the Record, it was clear that the 137 Applicants had been granted 14 days within which to pay the 1<sup>st</sup> Defendant thrown away costs of Kshs. 50,000/=. They were also granted 21 days within which to file their pleadings, documents and witness statements. Their own Advocate on record conceded that they did not comply with those directions and that they waited until the date fixed for hearing, almost 2 months later, to file the same. The allegations that the documents were filed electronically and that the Court Assistant failed to place the same before the Learned Judge are therefore irrelevant and without any basis. As at the date of the hearing, they had also not paid the sum of Kshs. 50,000/= as directed.
18. The conditions granted by the Court were discretionary and reasonable in my view. The Applicants have failed to demonstrate any basis why this court should review the earlier decision of the court.
19. It follows that I did not find any merit in the Motion dated 31<sup>st</sup> January, 2025. The same is dismissed with costs to the 1<sup>st</sup> Defendant.
20. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 10<sup>TH</sup> DAY OF JULY, 2025**

.....

**J.O. OLOLA**

**JUDGE**

In the presence of:

Ms. Firdaus Court Assistant.

Mr. Mkan Advocate for the Applicants

Mr. Mutisya Advocate for the 1<sup>st</sup> Defendant

