



**Gaita & another v Wairagu & another (Environmental and Land Originating  
Summons 65 of 2014) [2025] KEELC 6073 (KLR) (19 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6073 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 65 OF 2014  
JO OLOLA, J  
SEPTEMBER 19, 2025**

**BETWEEN**

**TITO THEURI GAITA ..... 1<sup>ST</sup> APPLICANT**

**DAVID JAMES WAMBUGU THEURI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**GODHARD THEURI WAIRAGU ..... 1<sup>ST</sup> RESPONDENT**

**EUTYCHUS MAREKIA WAIRAGU ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. By the Notice of Motion dated 8<sup>th</sup> September, 2023, David J. Wambugu Theuri (the Applicant) prays for Orders as follows:
  1. That this Honorable Court may be pleased to reinstate the judgment delivered by this court on 30.6.2023 and reverse its orders dated 11.10.2022;
  2. That this Honorable Court may be pleased to remove the Applicant's name from the application dated 18.7.2022 because the Applicant is not part and parcel of that application and he was not consulted when it was filed; and
  3. That the costs of this application be costs in the cause.
2. The application which is supported by an Affidavit sworn by the Applicant is premised on the grounds that:
  - a. The 1<sup>st</sup> Respondent herein who is also the 1<sup>st</sup> Plaintiff in the Originating Summons did not consult the Applicant when filing the application dated 18.7.2022;
  - b. The Applicant herein is satisfied with the judgment delivered by this court on 30.6.2022 and the court may reinstate the said judgment and cancel the order made herein on 11.10.2022; and



- c. The said judgment is in favour of the Applicant and therefore he cannot be part and parcel of the application dated 18.7.2022 wherein he is named as the 2<sup>nd</sup> Applicant.
3. Tito Theuri Gaita (the 1<sup>st</sup> Respondent) is opposed to the application. In his Replying Affidavit sworn and filed herein on 31<sup>st</sup> October, 2023, the 1<sup>st</sup> Respondent avers that court orders are not made in vain and they should be obeyed as dictated by the law. The 1<sup>st</sup> Respondent avers that the present application amounts to an abuse of the court process and asserts that if the Applicant is not satisfied with the orders issued on 11<sup>th</sup> October, 2022, he should seek remedy in the Court of Appeal.
4. I have carefully perused and considered both the application as well as the response thereto. I have similarly considered both the oral and written submissions placed before me by the parties.
5. By his application before the court, the Applicant has urged the court to set aside the order issued herein on 11<sup>th</sup> October, 2022 and to thereby reinstate the judgment delivered by this court on 30<sup>th</sup> June, 2022. It is the Applicant's case that he was satisfied with the judgment and that the 1<sup>st</sup> Respondent did not consult him when he applied to set aside the judgment.
6. A perusal of the record herein reveals that by a Notice of Motion application dated 18<sup>th</sup> July, 2022, the 1<sup>st</sup> Respondent herein had urged the court to review and set aside the judgment delivered herein on 30<sup>th</sup> June, 2022. That application was fixed for hearing on 19<sup>th</sup> September, 2022 in the presence of both the Applicant and the 1<sup>st</sup> Respondent herein. Given the fact that the Defendants – Godhard Theuri Wairagu and Eutichus Marekia Wairagu had not been served, the court directed that they be served for hearing inter-partes on 11<sup>th</sup> October, 2022.
7. The record further reveals that on the said 11<sup>th</sup> October, 2022, when the matter came up for hearing all the parties were present. Mr. Tito Theuri Gaita (the 1<sup>st</sup> Respondent herein) acting in person then asked the court to allow the application for review of the judgment. In response, Ms. Wothaya Learned Advocate holding brief for Mr. Waweru Macharia Advocate for the Defendants informed the court that they did not intend to file a reply to the application.
8. The Applicant herein David Wambugu was present in court in person as the 2<sup>nd</sup> Applicant. Asked about the application by the court, the record captures his response as follows:
- “The 2<sup>nd</sup> Applicant:
- I do not want the case reviewed. It is 90% correct.
- But I am not opposing the application. The Applicant is my son.”
9. On account of the fact that the application was not opposed by all the parties in the matter, the court allowed the application dated 18<sup>th</sup> July, 2022 as prayed.
10. More than one (1) year later, the Applicant instituted this application purporting that he was not consulted and that he was not part and parcel of the application. As the record reveals, the Applicant was present in court and did not make any attempt to oppose the application. In that respect, I agree with the 1<sup>st</sup> Respondent that the present application is an afterthought and without any basis.
11. The upshot is that I did not find any basis upon which to review the orders issued herein on 11<sup>th</sup> October, 2022. The Motion dated 8<sup>th</sup> September 2023 is misconceived and without any merit. I dismiss the same with no order as to costs.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 19<sup>TH</sup> DAY OF SEPTEMBER, 2025**



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**J.O. OLOLA**

**JUDGE**

In the presence of:

Ms. Firdaus Court Assistant.

Mr. S. K. Njuguna Advocate for the Applicant

Mr. Waweru Macharia Advocate for the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents

Mr. Tito Theuri – 1<sup>st</sup> Respondent in person

