



**Sila & 6 others v Council of Governors & another (Environment & Land
Petition 01 of 2021) [2024] KEELC 6583 (KLR) (2 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6583 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT & LAND PETITION 01 OF 2021
GMA ONGONDO, J
OCTOBER 2, 2024**

BETWEEN

**LUKIO OGINI SILA 1ST APPLICANT
SAMSON MAENDE 2ND APPLICANT
OGALO SEWE 3RD APPLICANT
MOSES OTIENO OMOLO 4TH APPLICANT
ODERO JOSEPH OYUGI 5TH APPLICANT
TOM MBOYA ODHIAMBO 6TH APPLICANT
KENNEDY OCHIENG ONYANGO 7TH APPLICANT**

AND

**THE INTERNATIONAL CENTRE FOR INSECT PHYSIOLOGY AND
ECOLOGY (ICIPE) 1ST RESPONDENT
THE HON ATTORNEY GENERAL 2ND RESPONDENT**

RULING

1. The seven appellants/applicants through G. S Okoth and Company Advocates, commenced an application by way of Notice of Motion dated 30th April 2024 under inter alia, Section 15(11) of the Land Commission [Act No. 5 of 2012](#) (The NLC Act herein) for orders that;
 - a. The Honourable court be pleased to correct the judgment and subsequent decree delivered on the 6th day of December 2022 and thereafter set aside the judgment based on the issue of jurisdiction and reinstate the suit for hearing afresh.
 - b. Costs of the application be in the cause.



2. The application is founded upon grounds (a), (b) and (c) stated on the face of it as well as the 6th petitioner/applicant's supporting affidavit of thirteen paragraphs. In summary, the applicants' lamentation in part is that on 6th December 2022, this Honourable Court decreed that the instant amended petition dated 25th October 2021 be referred to the National Land Commission for determination in line with Section 15 of the NLC Act. That the said section was already repealed and the NLC had no role to play in the case. That therefore, this court has jurisdiction over the dispute although a long period has elapsed.
3. It is established law that it is the duty of the court to ensure that the respondents were made aware of the existence of the application and have it served on them. They had the right to reply to the same or not; see *Ogada-vs-Mollin* (2009) KLR 620.
4. The respondents were duly served with the application on 31st May 2024 and 30th May 2024 respectively, as disclosed in an affidavit of service sworn on 10th July 2024 by Mr. G. S Okoth learned counsel for the applicants. However, no Replying affidavit was filed by either of the respondents in opposition to the application.
5. Also, the ruling notice was served on the respondents as discerned in an affidavit of service sworn on 29th July 2024 by Thomas Otieno Akach, an authorised process server of this court.
6. Hearing of the application proceeded by way of written submissions. Notably, none of the parties filed any submissions herein.
7. So, is the instant application merited?
8. I note from the record that the petitioners' amended petition was struck out on 6th December 2022. In its judgment, the honourable court remarked that:

‘...The court’s jurisdiction is not for fact-finding but enforcement and establishment of rights as stipulated under Article 23 of *the Constitution* of Kenya, 2010...’
9. Subsequently, the court referred the petition to the National Land Commission for determination in line with Section 15 of the NLC Act.
10. The applicant contends that the date of commencement of the NLC Act is 2nd May 2012. Thus, by 20th day of June 2022 when the Preliminary Objection was raised Section 15 of the Act had been repealed.
11. To that end, I note that the amended petition was lodged on 8th November 2021, when the said Section was still in force. However, as at the time of delivery of judgment on 6th December 2022, ten (10) years had elapsed from the date of commencement of the NLC Act. Therefore, the Section stood repealed by subsection 11 thereof and it stipulates that:

“(11) The provisions of this section shall stand repealed within ten years.”
12. It is trite law that a matter struck out and not dismissed can be reinstated through an appropriate application; see *Ngoni Matengo Cooperative Marketing Union Ltd-vs-Alimohamed Osman* (1959) EA 577.
13. Also, it is established law that the focus of a review is the decision of the court and entails interference with the exercise of the court's discretion permitted only on special circumstances where an apparent injustice has been occasioned; see *Charles Karathe Kiarie and 2 others vs Administrator of the Estate of John Wallace Mathare-Deceased and 2 others* (2020) eKLR.



14. Besides, this court is cognizant of Section 80 of the *Civil Procedure Act*, Chapter 21 Laws of Kenya and Order 45 of the Civil Procedure Rules, 2010 on review of judgment. Furthermore, Order 45 Rule 1 (supra) provides that:

(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.

15. Guided by the above provisions of the law and legal authorities, it is my considered view that the instant application is steadfast and meritorious.

16. A fortiori, the application lodged by way of a notice of motion dated 30th April 2024 is hereby allowed in terms of the two prayers as stated in paragraph 1 (a) and (b) hereinabove.

17. The petition is set for directions on 6th November 2024 and the respondents be served accordingly.

18. It is so ordered.

DATED, DELIVERED AND SIGNED AT HOMA BAY THIS 2ND OCTOBER 2024.

G. M. A ONG'ONDO

JUDGE

Present;

Mr. G S Okoth learned counsel for the applicants/petitioners

Mr. T Luanga, court assistant

