



**Pulei (Suing as the Personal and Legal Representative of Kasaine Pulei Kinyoei alias Kasaine Ole Pulei - Deceased) v Pulei & 7 others; Kakaangi & another (Interested Parties) (Environment & Land Case 960 of 2017) [2023] KEELC 16117 (KLR) (15 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16117 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 960 OF 2017  
MN GICHERU, J  
MARCH 15, 2023**

**BETWEEN**

**MUNKET PULEI (SUING AS THE PERSONAL AND LEGAL REPRESENTATIVE OF KASAIN PULEI KINYOEI ALIAS KASAIN OLE PULEI - DECEASED) ..... PLAINTIFF**

**AND**

**MENTA NERISA RISA PULEI ..... 1<sup>ST</sup> DEFENDANT  
MATIPEI OLE RISA ..... 2<sup>ND</sup> DEFENDANT  
KIPIRORI OLE RISA ..... 3<sup>RD</sup> DEFENDANT  
MPOYE OLE RISA ..... 4<sup>TH</sup> DEFENDANT  
KIPENO ENERISA ..... 5<sup>TH</sup> DEFENDANT  
KONGO OLE RISA MUNII ..... 6<sup>TH</sup> DEFENDANT  
COUNTY LAND REGISTRAR, KAJIADO ..... 7<sup>TH</sup> DEFENDANT  
COUNTY SURVEYOR, KAJIADO DISTRICT ..... 8<sup>TH</sup> DEFENDANT**

**AND**

**JOSEPH BABU KAKAANGI ..... INTERESTED PARTY  
PAULINE NASHUR BABU ..... INTERESTED PARTY**



## RULING

1. This ruling is on the Notice of Motion dated 16/5/2022. The motion is brought under Sections 1A, 1B, 3A and 80 of the [Civil Procedure Act](#), Orders 45, rules 1, 2, 3 and 5 of the [Civil Procedure Rules](#), Article 159 of the [Constitution of Kenya](#) and all enabling provisions of the law.
2. The motion seeks the following orders.
  - (i) The firm of Yano and Company Advocates be granted leave to come on record to act for the 1<sup>st</sup> to 6<sup>th</sup> Defendants in place of Sankale and Company Advocates as evidenced by the consent filed herein.
  - (ii) The court be pleased to review, vary and/or set aside the judgment dated December 20, 2021 and thereafter hear the case afresh.
3. The application is supported by twelve grounds, an affidavit sworn by the third Defendant, Kipirori Ole Risa and several annexures. The gist of all the above material is that there is an error apparent on the face of the record, there is discovery of new and important facts which were not produced before the court and this warrants the court to review its judgment. This new evidence is that the original subdivision of LR Kajiado/Kipeto/44 into 347, 348 and 349 was done by Risa Ole Munii Pulei, Kasaine Pulei Kinyoei and Moses Tinga in the year 1991 in the absence of all the parties to this suit hence no fraud can be attributed to the Defendants. It was not made known to the court that the late Kasaine Pulei Kinyoei was alive when the subdivision of LR 347 place and he did not complain. The other new evidence is that there are third parties who will be affected by the execution of the judgment and they are innocent purchasers for value without any notice of any claim and they have not been heard.
4. The Defendants' application is opposed by the Plaintiff who has sworn a replaying affidavit dated 31/5/2022 in which he deposes that there is neither new evidence nor error apparent on the face of the record because the issue of the history of the dispute is part of the court's judgment.

Secondly, the Defendants were represented by an advocate, participated in the trial and their evidence and testimony given through the first Defendant.

Thirdly, the current motion is an abuse of the court process and only a knee jerk reaction whose purpose is to derail the ongoing implementation of the decree.

Finally, hearing the dispute afresh will be greatly prejudicial to the Plaintiff because this suit was instituted in the year 2017.
5. Counsel for the parties filed written submissions on 16/1/2023 and 23/1/2023 respectively.
6. I have carefully considered the application in its entirety including the affidavits, annexures, grounds, submissions and the case law cited therein. I make the following findings.

1. Firstly, under Order 45, rule 1, [Civil Procedure Rules](#), there are three instances where the court would make an order for review. They include –
  - i. Discovery of new and important matter, or



- ii. Mistake or error apparent on the face of the record or
- iii. Any other sufficient reason.

In this case, the first to sixth Defendants rely on the first and second instances. According to the Defendants, the new evidence concerns who was present when the original land was subdivided.

My finding is that this evidence is not new. It is part of the record and it is not in dispute.

2. Secondly, the other new evidence is said to be the existence of third parties. A look at the last page of the judgment dated 20/1/2021 will show that the issue of third parties was addressed and it was held that it was incumbent upon the Defendants to join them through third party proceedings and that they failed to do so.
3. Thirdly, an error on the face of the record speaks for itself. It is obvious and does not need much argument. The Applicants have not pointed out any error on the face of the record and none is obvious.
4. Finally, the issues before the court were only two. It was not disputed that the land was to be shared equally between the Plaintiff on the one part and the Defendants on the other. It was also not disputed that the Plaintiff's land was less in size than it should be. The only issue was whether his claim for the rightful share of land could be defeated by limitation. The court found that it could not be defeated. Where then is the new evidence? There is none. Any new evidence would be to the effect that the two parcels numbers 347 and 348 are equal in size. The truth is that they are not.

The second new evidence that would warrant review would be that the Plaintiff was not entitled to an equal share. This has never been the Defendants' defence. There being no new evidence along the two issues above, I find no merit at all in the application dated May 16, 2022 and I dismiss it with costs to the Plaintiff. The prayer for the new counsel to come on record is however allowed.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 15<sup>TH</sup> DAY OF MARCH, 2023.**

**M.N. GICHERU**

**JUDGE**

