



**Gitau v Githinji & another (Environment and Land Appeal
E058 of 2023) [2025] KEELC 3893 (KLR) (19 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3893 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E058 OF 2023**

**JA MOGENI, J
MAY 19, 2025**

BETWEEN

JOHN MICHUKI GITAU APPELLANT

AND

MARY NJERI GITHINJI 1ST RESPONDENT

**JOSEPH MUTURI MUNENE (SUED AS TRUSTEE OF GLORIOUS JOY
CHURCH NDARASHA) 2ND RESPONDENT**

RULING

1. This Ruling is in respect of the Notice of Motion Application dated 16/01/2025 filed under Section 80 of the *Civil Procedure Act*, Order 45 Rule 1, 2 and 3 of the Civil Procedure Rules which has been filed by the Plaintiff/Appellant. The Application seeks orders that:-
 - a. Spent
 - b. That ex parte and in the interim and pending hearing and determination of this Application, the Honorable Court be pleased to Grant Stay of Execution of Judgment and Decree of this Honorable Court for the Judgment issued on 20th November, 2024.
 - c. The Judgment of this Honorable Court Dated 20th November, 2024 and all subsequent orders be reviewed and set aside or varied on the grounds set forth herein.
 - d. The Honorable Court considers the material facts and evidence presented during the trial but inadvertently omitted in the Judgment.
 - e. Such other or further orders be made as the Honorable Court may deem just and expedient in the circumstances.



2. The Application is premised on grounds on the face of the Application number 1-20 which I see no need of repeating verbatim seriatim and supported by the Supporting Affidavit sworn by one Mary Njeri Githinji the 1st Respondent Applicant. She avers that whereas this Honorable Court rendered a Judgment granting the appeal by Appellant/Respondent and overturning the Judgment of the Trial Court yet the Respondents/Applicants have been utilizing the suit property since 2010 to date the Applicant faces imminent risk of irreparable harm if the execution of the Judgment proceeds before the review Application is determined.
3. The Applicant avers that the Court failed to take into consideration critical evidence and material facts that were duly presented before the Trial Court and which the Applicant avers have been captured in the Record of Appeal which he annexed to the Affidavit and marked as MG-02.
4. It is the contention of the Applicant that the learned Judge failed to consider the following material facts:
 - a. The transfer of the suit property to the 1st Applicant/Respondent and subsequently to the 2nd Applicant/Respondent was effected on 9th March 2015, whereas the Grant purporting to grant beneficial interest to the Respondent was only issued on 17th October 2017 (Appearing at page 25 & 33 is a copy of the Green Card while appearing at page 19 is a copy of the Certificate of Confirmation of Grant Dated 17th October, 2017).
 - b. The transfer to the 1st Applicant/Respondent was duly booked, corresponding stamp duty was paid, and transfer fees were settled, all in compliance with the law (Annexed and Marked MG-03 herein a Certified Copies of Transfer Document and Receipts for the payment of Stamp Duty and for Transfer)
 - c. Land in Nyakinyua was customarily not registered in the name of a man, which is why it was agreed that Agnes Wamaitha would be registered as the owner, contrary to the Appellant/Respondent's assertion of ownership.
 - d. The suit property was never at any point registered in the name of Phyllis Nyaguthii (Deceased), as the Green Card clearly indicates it was transferred directly from Nyakinyua to the 1st Applicant/Respondent.
 - e. Appearing at Page 84 of the Record of Appeal are evidence that as early as 24th May, 2006 Agnes had made payment and a receipt issued for the processing of title to the suit property.
 - f. On 13th September, 2016 the 1st Respondent/Applicant lodged the Transfer Forms for processing of the title (as it appears on page 85 of the Record of Appeal) and which title was processed on 6th March, 2020 after the subdivision.
5. That the evidence presented by the 1st and 2nd Applicants/Respondents demonstrated that due diligence had been conducted before the purchase and transfer of the suit property, but this evidence was not adequately considered by the Learned Judge. Further that prior to the processing of title in the name of the 1st Respondent/Applicant a Stamp Duty of Kshs 120,000/= was paid on the 27th February, 2015 as no title deed can be processed without evidence of payment of Stamp Duty is presented (Annexed and Marked MG-03 is a copy of Stamp Duty Payment advise from ^{National Bank}).
6. That the Learned Judge further failed to consider the following facts related to the transfer process:
 - i. Agnes Wamaitha had express permission from the Appellant/Respondent's brother to be registered in place of Phyllis Nyaguthii (Deceased).



- ii. Agnes Wamaitha paid for the title processing and consciously allowed the 1st Applicant/Respondent to be registered on 9th March 2015, following a successful purchase on 22nd December 2010.
 - iii. Agnes Wamaitha was recognized as a bona fide nominee of the estate of Phyllis Nyaguthii (Deceased), a fact that was not disputed by the Appellant/Respondent.
 - iv. The Appellant/Respondent was aware, at all material times that his wife, Agnes Wamaitha, was to be registered as the owner of the suit property while he was residing in the USA.
7. That the failure to consider these material facts amounts to an error apparent on the face of the record, warranting a review under the provisions of Order 45 Rule 1 of the Civil Procedure Rules.
 8. That no Appeal has been preferred against the Judgment or order sought to be reviewed, and this Application is therefore properly before this Honourable Court.
 9. That if the Judgment is executed, the suit property will be auctioned, causing irreparable harm to the Applicant and rendering the pending Review nugatory.
 10. That the Review Application identifies a material error apparent on the face of the record, warranting the reconsideration of the Judgment to ensure a just and fair resolution of this matter.
 11. That the Applicant will lose their home if the execution proceeds, and the outcome of the Review will no longer have practical relevance.
 12. That on the 18th February, 2020 the caution that the Appellant/Respondent had placed on the subject property was removed pursuant to Section 73 of the [Land Registration Act](#) and thereafter title for RUIRU/RUIRU EAST BLOCK 2 closed and new titles issued as a result of subdivision of the subject property (Annexed and Marked MG-04 are copies of the recent Green Card Certified on 13th January, 2025 together with accompanying documents thereto).
 13. That this Application was filed promptly after the Judgment, demonstrating good faith and urgency in seeking relief from this Honourable Court.
 14. That the Applicant is ready and willing to provide security as directed by this Honourable Court to safeguard the Respondent's interests while this Application is being determined.
 15. That the balance of convenience and fairness tilts in granting a stay of execution, as it will uphold justice, prevent undue hardship, and protect the Applicant's rights pending the determination of this Review.
 16. That it is in the interests of justice that this Honourable Court revisits the Judgment, to ensure a fair and just determination of the matter based on all evidence and facts presented.
 17. That the 2nd Respondent/Applicant operates a Church on the suit property and where a great multitude of believers converge every Sunday and any other day designated for worship to exercise their freedom of worship (Annexed and Marked MG-05 are copies of photographs taken during the day of worship).
 18. The Applicant contends that she stands to suffer insurmountable loss and damage if the stay of execution is not granted.
 19. In response to the Replying Affidavit by the Appellant the 1st Respondent/Applicant filed a Further Affidavit and stated as follows:



20. That the Application dated 16th January, 2025 is anchored in the Provisions on Order 45 Rule 1 and particularly on an account of some mistake or error apparent on the face of the record and such other sufficient reasons as outlined in her Supporting Affidavit dated 16th January, 2025.
21. Further that the Copy of Green certified on 23rd January, 2025 clearly indicates the history of land as per annexure marked MN-1 which is a copy the Green Card certified on 23/01/2025. She therefore deposes that at all material times, one Phillis Nyaguthii (Deceased) the transactions in the Green Card do not show that at any material time was her name captured in the Green Card of the Property Parcel No. Ruiru/Ruiru East Block 2/2580. Further that at page 84 of the Record of Appeal there is a receipt dated 24th May, 2005 where one Agnes Wamaitha Michuki (who was the wife of the Appellant/ Respondent) as the contributor for Ballot Number 1069 made payment of Kshs 3,000/= to Nyakinyua Investment Limited for processing of title and where it is clear from the face of the receipt that there was no identifiable parcel that would be transferred but rather only a Ballot Number 1069 was available for transfer from one individual to another but not land. That this shown through Annexure marked MN-2a which is a copy of the Receipt Dated 24th May, 2006 is a copy of receipt paid by Agnes Wamaitha Michuki.
22. It is the 1st Respondent's position that on or around 22nd December, 2010 one Agnes Wamaitha Michuki (who was the wife of the Appellant/Respondent) transferred Ballot Number 1069 that she had been following up as a bonafide beneficiary to the 1st Respondent. Further that considering that Nyakinyua Investment Limited only recognized females as beneficiaries of the ballots that would give forth to entitlement of subject parcels upon payment of requisite fees.
23. She further deposes that on or around the 24th June, 2011 she paid Kshs 5,000/= for the transfer of Ballot Number 1069 from one Agnes Wamaitha Michuki (who was the wife of the Appellant/ Respondent) and was issued with a receipt which she annexed to the Affidavit and which is marked as annexure MN-2b dated 24th June, 2011 and appearing at page 84 of the Record of Appeal.
24. She stated that on or around the 25th November, 2011 she paid Kesh 7,000/= for processing of Title Deed for Ballot Number where it was then identifiable that the Parcel linked to Ballot Number 1069 would be Parcel No. 2580. She also annexed a copy marked as MN-2c dated 25th November, 2011 from Nyakinyua Investment Limited and appearing at page 84 of the Record of Appeal.
25. It is her position that at the time of death of one Phillis Nyaguthie Gitau (Deceased) on 3/07/1989^{no} land had been registered in her name, the only thing linked to her was Ballot Number 1069 and which was accordingly and dully paid for by one Agnes Wamaitha Michuki (who was the wife of the Appellant/Respondent).
26. That before full payment of requisite fees one would not claim to be owner nor proprietor of any parcel from Nyakinyua Investment Limited, but that it was however a usual procedure that one would become beneficiary of a Ballot upon payment of requisite fees.
27. That it is an overreach for the Appellant to argue that as early as 1989 the subject property belonged to his late mother while his mother had not paid up for the Ballot, the Ballot was subsequently partly paid up by one Agnes Wamaitha Michuki (who was the wife of the Appellant/Respondent) and processing of title was hinged on this process.
28. That according to the 1st Respondent it was not a pre-requisite to have any succession done before a Ballot can be transferred from one person to another, this explains why Nyakinyua Investment Limited allowed the transfer of Ballot Number 1069 from Phillis Nyaguthie Gitau (Deceased) to one Agnes Wamaitha Michuki (who was the wife of the Appellant/Respondent) and subsequently to me as a result of which I was able to finish paying up for the Ballot and processing of Title Deed.



29. She avers that the Certificate of Confirmation dated 17/10/2017 purporting to transmit Parcel Property Ruiru/Ruiru Block 2/2580 was issued in error because the said parcel property Ruiru/Ruiru Block 2/2580 has never at any material time been registered in the name of Phillis Nyaguthie Gitau (Deceased). That prior to the Certificate of Confirmation dated 17/10/2017 the Appellant/Respondent was expected to produce before Court either a copy of Title Deed for Parcel Property Ruiru/Ruiru Block 2/2580 or a Search for Parcel Property Ruiru/Ruiru Block 2/2580 in the name of Phillis Nyaguthie Gitau (Deceased) which was never done.
30. That it is this Certificate of Confirmation dated 17/10/2017 that the Honourable Court heavily relied upon to overturn the finding of Judgment and Decree of the Hon. J.A. Agonda delivered in Ruiru SPM's EL.C. Civil Suit No. E065 of 2021 on 20/01/2022.
31. It is her contention that a ballot confirms entitlements unless the attendant conditions are fulfilled with reference to the payment of requisite fees and which are partly done by one Agnes Wamaitha Michuki (who was the wife of the Appellant/Respondent in the first instance before the Ballot was transferred to the 1st Respondent).
32. That when the 1st Respondent had satisfied all the conditions required for processing of Title Deed, the land Parcel Property Ruiru/Ruiru Block 2/2580 was transferred to me by Nyakinyua Investment Limited appearing at Pages, 81, 82, 83, 85, 86, 87 and 88 being Sale Agreement and payments made to Kiambu County Government.
33. She avers that the allegation contained at paragraph 15 of the Replying Affidavit that the Judgment of Trial Court was issued under suspicious circumstance is just unfortunate and meant to paid the Learned Magistrate in the bad light, such an allegation was never brought to the attention of the Court, the Learned Magistrate is being vilified without being accorded an opportunity to defend herself, if the Appellant want to take action against the Learned Trial Magistrate they can use the right forum.
34. The 1st Respondent avers that she filed this Application for Review before 60 days duration allowed for one to file an Appeal at the Court of Appeal and that there is no Record of Appeal nor Memorandum of Appeal that has been filed at the Court of Appeal so as to invalidate these Review proceedings.
35. Further that Appellant/Respondent is not truthful to allege that he has not enjoyed the subject suit property for the last 25 years, when one Agnes Wamaitha Michuki (who was the wife of the Appellant/Respondent) received the proceeds of the sale, and which evidence was not controverted in the Trial Court she educated their children and built the house that the Appellant is staying in to date.
36. That the decision to transfer the Ballot and ultimately sell the subject property as narrated by one Agnes Wamaitha Michuki (who was the wife of the Appellant/Respondent) was so that she could be able to take care of their children as the Appellant/Respondent had gone to USA and abandoned them without sending any support their way.
37. It is the 1st Respondent's contention that at the heart of this dispute is the family disagreement between the Appellant/Respondent and one Agnes Wamaitha Michuki (who was the wife of the Appellant/Respondent) where the Appellant/Respondent is advancing personal vendetta against people who knows nothing about their disputes.
38. She further states that she transferred the suit property following due process to the 2nd Respondent/Applicant from where Glorious Joy Church Ndarasha carries out their weekly worship over the last 6 years.



39. The Application is opposed vide the Replying Affidavit sworn by the Appellant/Respondent sworn on 10/02/2025 where he avers that the Application is frivolous, vexatious, bad in law, meritless, and an abuse of the Court process and is meant to delay the enjoyment of validly and lawfully obtained Judgment.
40. That the Judgment was delivered on 20/11/2024 and the Application was filed on 16/01/2025 and no explanation has been given for the delay yet this is a matter for Review and that the Application contravenes the express provision of Order 45 since there is no proof that the Applicant could not obtain a copy of the Green Card prior to filing of this suit. Thus the Green Card is not a discovery of new information since it has been a public record prior to filing of this suit.
41. That the Applicant has also shown no error apparent on the face of the record that would warrant a reconsideration of evidence that the Application is just rehashing issues already tried and determined.
42. Some of the rehashed issues include the fact that at page 129 of the Record of Appeal the Applicant states that he was aware that the land belonged to the late Philis Nyaguthie Gitau and this confirms that the suit property was transferred to the Applicant without obtaining a Grant over the said Estate. Since it is the Applicant's admission that the transfer to the 1st Respondent was done in 2015 whereas the Grant over the Estate was issued in 2017.
43. That the root of title is marred with irregularities because the transfer was done two years before the Grant was obtained. That the property was registered in the name of Nyakinyua Investments and was transferred to the 1st Respondent using the shares of Philis Nyaguthie Gitau with the succession proceedings.
44. The Applicant has claimed to have consent to transfer the land which was not produced during trial and that by dint of Section 45 of the Law of Succession the Sale Agreement dated 22/12/2010 is void ab initio. That at the same time the Magistrate was conflicted since he had worked at the law firm as the Advocates representing the Respondents at trial and that the issue was escalated to Law Society of Kenya vide the document marked as JMG1.
45. In further contention the Respondent avers that this Court is functus officio since the Advocates filed a Notice of Appeal dated 24/11/2024 as shown through annexure JMG2 and that Section 80 of the *Civil Procedure Act* expressly prohibits Review where an Appeal has already been preferred. Thus, this Court lacks jurisdiction to entertain the Application.
46. It is the averment of the Respondent that he would suffer prejudice and injustice if the orders sought are granted because he will not be able to access and/or put into any productive use the suit land having been deprived of the same for over 25 years.
47. That also litigation must come to an end and the intent of the Application appears to only further frustration for quest for justice.

Analysis and Determination.

48. The Application was canvassed by way of written submissions. Macharia, Gaitho Murigu Advocates LLP for the Respondent/Applicants and Rumba Kinuthia & Co. Advocates for the Appellant/Respondent. The Applicants filed submissions dated 7/03/2025 wherein Counsel reiterated that the order delivered on 20/11/2024 was made without the Court paying attention to the history of ownership of the subject property. Further that a ballot does not confer ownership and title.
49. The Counsels identified five issues for determination which however the Court is not bound to follow since the Court is at liberty to formulate its own issues. The issues identified were:



- a. Whether there exist an Error Apparent on the face of the Record?
 - b. Whether a Ballot Number 1069 conferred entitlement to land to Phillis Nyaguthie Gitau (Deceased)?
 - c. Whether there existed a property namely Ruiru/Ruiru East Block 2/2580 to be transmitted through the succession process?
 - d. Whether the 2nd Applicant was a bonafide purchasers for value of the suit property?
 - e. Whether filing a Notice of appeal can bar a Party from filing for a review under Order 45 Rule 1?
 - f. Whether the 2nd Applicant was a bonafide purchasers for value of the suit property?
50. They submitted that Phillis Nyaguthie Gitau (deceased) never made any requisite payment to confer title to her. To the contrary it is Agnes Wamaitha Michuki and Mary Njeri who made the payments.
 51. The Counsels submitted that the Certificate of Confirmation of Grant that purports to have submitted the suit property to the Appellant was an error.
 52. They submitted that filing of an Appeal does not bar a party from seeking a Review of Judgment since the power to Review Judgment is inherent in the Court's jurisdiction to correct error or rectify mistakes apparent.
 53. Counsel for the Appellant/Respondent identified four issues for determination which however are not binding to the Court and submitted on the four issues. The identified issues are:-
 - i. Whether Agnes Wamaitha had any legal authority to transfer Share Certificate number 6322 ballot Number 1069 to the 1st Defendant;
 - ii. Whether the 1st Respondent is an innocent purchaser for value;
 - iii. Whether the Court has jurisdiction to hear this Application;
 - iv. Who is entitled to costs?
 54. They submitted that the dispute at hand involves Land Parcel Number Ruiru/Ruiru East Block 2/2580 which goes to the root of title. That the Appellant's mother, the late Phillis Nyaguthie Gitau was a shareholder at Nyakinyua Investments Ltd. By dint of the shareholding, the Applicant was issued with two receipts number 3067 and 3824 which as per the receipts were for payment of one block of 100 shares and survey fees. The late Phillis Nyaguthie passed away on 3rd July 1989 intestate. After passing away, the Succession Cause over the said estate was only completed in 2017.
 55. That the transfer of the ballot to the 1st Respondent was done without the Succession Cause being done and so this challenges the root of title. It follows that the 1st Respondent had therefore no good title to pass to the 2nd Respondent. That since the root of title is flawed it is not enough for the 1st and 2nd Defendant to waive a title whose root is flawed.
 56. That filing of both Notice of Appeal and Review concurrently contravenes Sections 1A and 16 of the Civil Procedure Act whose aim is for disposal of cases expeditiously and also it enables the Courts to avoid multiplicity of proceedings. Thus the Respondent prayed for dismissal of the Application.
 57. The first issue to be considered in this Application is whether the Court has jurisdiction to hear this Application in view of the fact that the Applicant filed a Notice of Appeal against the Judgement she now wants the Court to Review. I am alive to the conflicting jurisprudence on the issue as to whether the filing of a Notice of Appeal denies the trial Court the mandate to Review its Judgement or Decree



- see the discussion of the issue in *Abdisalam Hassan Ismail & 2 Others v Kenya Railways Corporation & 3 Others* [2015] eKLR.

58. On my part, I do not find it necessary to engage in a debate on the impact of a Notice of Appeal on an Application for the Review of a Judgement or Decree. I say so because the latest decision from the Court of Appeal holds that once a Notice of Appeal is filed, this Court has no jurisdiction to entertain an Application for the Review of its decision. This statement of the law is found in the case of *Otieno, Ragot & Company Advocates v National Bank of Kenya Limited* [2020] eKLR; Civil Appeal No. 60 and 62 of 2017 where it was held that:

“ Even though the substantive appeal had not been filed, the Respondent had filed a notice of appeal. At the time when the Application for review was made, the notice of appeal was in place. In effect, it was pursuing the relief of review while keeping open its option to appeal against the same ruling. It probably hoped that if the Application for review failed it would then pursue the appeal. It was gambling with the law and judicial process. It is precisely to avoid this kind of scenario that the option either to appeal or review was put in place. There can be no place for review once an intention to appeal has been intimated by filing of a notice of appeal. (See: *Kamalakshi Amma v A. Karthayani* [2001] AIHC 2264). The Respondent’s Application for review was therefore incompetent hence the Court did not have jurisdiction to grant the orders sought under Section 80 of the [Civil Procedure Act](#) and Order 45 of the Civil Procedure Rules.”

59. The law as stated above should lead to the dismissal of the Application at this stage. I will, nevertheless, proceed to consider the substance of the Application for completeness of the matter. The question that follows is whether the Application for Review has met the threshold prescribed in the law.

60. This Court is empowered by Section 80 of the [Civil Procedure Act](#) and Order 45 Rule 1 of the Civil Procedure Rules, 2010 to Review its own Judgement or Decree where there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the Applicant or could not be produced by the Applicant at the time when the Decree was passed or the Order made; there is some mistake or error apparent on the face of the record; or for any other sufficient reason.

61. In the case of *Republic v Anti-Counterfeit Agency & 2 Others Ex-Parte Surgippharm Limited* [2014] eKLR, it was held that:

“ It is clear that unlike Order 45 (which is a delegated legislation), section 80 of the [Civil Procedure Act](#), (which is the parent Act) gives the Court wide and unfettered jurisdiction in the exercise of its powers of review and does not prescribe the conditions upon which an Application for review may be granted. In the case of *Official Receiver and Provisional Liquidator Nyayo Bus Service Corporation vs. Firestone EA (1969) Limited* Civil Appeal No. 172 of 1998 the Court of Appeal held that section 80 of the [Civil procedure Act](#) enables a Court to make such orders on review Application which it thinks just so that the words “or any sufficient reason” as used in Order 44 [now Order 45] rule 1 of the Civil Procedure Rules are not e*iusdem generis* with the words “discovery of new and important matter” etc. and “some mistake or error apparent on the face of the record” and that those words extend the scope of the review.”



62. In the case of *Evan Bwire v Andrew Nginda*, Civil Appeal No. 103 of 2000, Kisumu, [2000] LLR 8340, the Court noted that:
- “An Application for review will only be allowed on very strong grounds particularly if its effect will amount to re-opening the Application or case afresh.”
63. In the case of *Republic v Public Procurement Administrative Review Board & 2 Others* [2018] eKLR it was held that:
- “The review must be confined to error apparent on the face of the record and re-appraisal of the entire evidence or how the Judge applied or interpreted the law or exercised his discretion would amount to exercise of Appellate Jurisdiction, which is not permissible.”
64. The Court of Appeal while discussing the power of review of a Judgment in the case of *National Bank of Kenya Limited v Ndungu Njau* [1997] eKLR opined that:
- “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 another Judge could have taken a different view of the matter. Nor can it be a ground for review that the Court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.”
65. A look at the instant Application, the Supporting Affidavit and the annexures thereto does not disclose any new and important matter as alleged. The impression one gets is that the Applicant is trying to review the decision of the Learned Judge’s decision through this Application. She has not pointed out the new and important evidence that was not available to the Learned Judge when the matter was heard by this Court. The Judgement that was delivered by the Learned Judge long after the Judgement of the Learned Magistrate was delivered cannot be categorized as new and important evidence. My reading of Judgment reveals that the Learned Judge considered the evidence presented at the Magistrate’s Court and was satisfied that the said Judgment needed to be set aside.
66. These events can only be the subject of fresh Appeals which cannot be connected to the decision in this matter.
67. The annexures produced are still the annexures that were considered at the Magistrate’s Court and so I see no new information that was not canvassed that would call for a Review. The decision made by the Court is based on sound legal principle as provided in Section 45 of the Succession Act.
68. The Applicant does not claim that there is an error on the face of the Judgement and neither does he seek a Review of the Judgement for any other sufficient reason.
69. A reading of the Application shows that the Applicant also wants this Court to overturn the Judgement in its entirety. The Applicant has not established the grounds for setting aside the Judgement. The Applicant seeks a Review of the Judgement and at the same time prays that the Judgement be set aside. Unfortunately, the Applicant has not met the conditions for the grant of any of the orders sought.



70. The Judge gave clear reasons for allowing the Appeal when she stated that:

“ 46. Having held that the Respondents illegally and fraudulently acquired title to the suit land, the question of bona fides is unfounded for the simple reason that fraud and illegality destroys any aspect of bonafides.”

71. I need not say more in order to reach the inevitable conclusion that the Applicant has not established any ground to warrant a Review or the setting aside of the Judgement delivered in this matter on November 20, 2024. The appropriate order is to dismiss the Applicant’s Notice of Motion dated January 16, 2025. Having dismissed the Application, it follows that the Applicant will meet the Appellant/Respondent’s costs in respect to the Application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 19TH DAY OF MAY 2025 VIA MICROSOFT TEAMS.

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MOGENI J

JUDGE

In the presence of:

Mr. Kuria for the Appellant

Mr. Macharia for the 1st and 2nd Respondents

Mr. Melita – Court Assistant

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MOGENI J

JUDGE

