



REPUBLIC OF KENYA



**Kilongu (Chairman) & 2 others v Sanoe (Chairman) & 10 others (Environment and Land Case 39 of 2020) [2025] KEELC 3674 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3674 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND CASE 39 OF 2020**

**A OMBWAYO, J**

**MAY 9, 2025**

**BETWEEN**

**IPITIET OLE KILONGU ALIAS IPITE OLE KILOKU (CHAIRMAN AND  
LENKONKO OLE NKAMPAA (SECRETARY) & 2 OTHERS & 2 OTHERS & 2  
OTHERS & 2 OTHERS ..... APPLICANT**

**AND**

**LEKISHON OLE RAKITA SANOE (CHAIRMAN) & 10 OTHERS & 10 OTHERS  
& 10 OTHERS & 10 OTHERS ..... DEFENDANT**

**RULING**

**Brief Facts**

1. The Defendants/Applicants filed the instant application dated 27th January, 2025 seeking the following orders:
  1. Spent.
  2. Spent.
  3. That this Honourable Court be pleased to clarify the name of the 1st Defendant on the judgment delivered on 16th October, 2024 as the name reads Lekishon Ole Rakita Sanoe who was not a party to the suit herein.
  4. That this Honourable court be pleased to vary, review and/or set aside its judgment delivered on 16th October, 2024 and admit the list of beneficiaries which was left out during the hearing of the case and which list is very crucial for the transfer of the parcel of land known as Maela Ndabibi Block 5/2253 and 3073.
  5. That this Honourable court be pleased to vary, review and/or set aside its judgment delivered on 16th October, 2024 requiring the 17th Defendants in *HCCC 89 of 1996* to hold the



aforesaid parcel of land in trust on behalf of the beneficiaries as six (6) out of the 17 Defendants in *HCCC 89 of 1996* are deceased hence making it impossible to comply with order no. C of the judgment so issued.

6. That this Honourable court be pleased to direct the Land Registrar, Naivasha Sub-County registry to issue titles to the six hundred and one (601) beneficiaries who are currently living on the land parcel Maela Ndabibi Block 5/2253 and 3073.
  7. That the costs of this application be provided for.
  8. That such further and other relief be granted as this court deems fit and expedient in the circumstances.
2. The Application was based on grounds set out and supported by the Affidavit of Lekishon Ole Linti the 1st Defendant/Applicant herein sworn on 27th January, 2025. He stated that vide the judgment delivered on 16th October, 2024, the Honourable court directed that the title deeds of Maela Ndabibi Block 5/2253 and 3073 be issued to the 17 Defendants in *HCCC 89 of 1996* to hold in trust for themselves and beneficiaries. That out of the 17 Defendants, 6 have already passed on and thus it was difficult to enforce the judgment. He stated that during hearing of the case, the court relied on the 1st Plaintiff's statement that the beneficiaries were 3000 people yet it has only 610 members currently residing on the land whose membership was since closed. He further stated that no defence was filed so as to notify the court of the same. He added that the list of members was not admitted in court hence there would be an open lacuna by the 1st Respondent to include other members and thus prejudice the members already living on the land. He stated that it was crucial for the court to admit the documents as evidence and allow the Applicant prosecute the case on merit. He urged the court to allow the application as prayed.

## Response

3. The 1st Plaintiff filed his Replying Affidavit sworn on 11th February, 2025 where he averred that the application was frivolous and a waste of the court's time. He averred that the application was res judicata as the Applicants had filed a similar application dated 28th October, 2024 which was heard and dismissed on 19th December, 2024. He further averred that the said orders cannot be granted as they require a substantive suit. He also averred that the Applicants failed to meet the laid down criteria for review of the court's judgment. He averred that the application sought to introduce documents which the Applicants failed to produce as they failed to file their Defence despite having been given opportunity to do so by the trial court. He averred that the fact that some of the Defendants had passed on, it did not amount to review as the remaining 11 Defendants could be registered as trustees. He added that there was no evidence that the 6 Defendants were deceased. He averred that the present application for review ought to be filed in //HCCC No. 89 of 1996/ where the court had had issued orders as to ownership and registration. He averred that the Applicants fully participated in the hearing of the case as they cross examined the Plaintiffs and the 7th to 11th Defendants. He added that their Defence was struck out having been filed out of time and without the court's leave. He averred that the Applicants could not seek review on their failure to file the necessary documents that were well within their reach. He added that the application sought for prayers unknown in law and admission of documents yet they never filed any counter claim seeking for issuance of titles. He urged the court to dismiss the application.
4. The Applicants filed a further affidavit sworn by the 1st Applicant on 27th February, 2025. He reiterated the contents of his supporting affidavit and added that they abandoned the appeal and applied for review since their advocate on record had failed to file documents during hearing of the



case. He stated that the mistakes of a counsel should not be visited upon the client despite the damage. He further stated that it was imperative for the judgment to be reviewed so as to lock out other people who would want to benefit from the judgment. He added that the Land Registrar has no jurisdiction to determine the rightful beneficiaries. He stated that in the event the issue of beneficiaries is not ascertained, they may have a ripple effect of the likes of the 2nd to 6th Defendants who would bring suits to be included as beneficiaries.

## Submissions

5. Counsel for the Applicant filed his submissions dated 27th February, 2025 where he identified two issues for determination. The first issue was whether the application met the threshold for grant of review of the judgment delivered on 16th October, 2024. While submitting in the affirmative, he relied on Order 45 rule 1 of the Civil Procedure Rules and Section 80 of the *Civil Procedure Act*. He also relied on the case of *Registered Trustees of the Archdiocese of Dares Salaam V The Chairman Bunju Village Government & Others*. He submits that the matter proceeded for hearing but their list of documents were never filed in court yet it had crucial documents despite having retained an advocate to defend their suit. He also submits that the Applicant sought review without undue delay seeking to introduce new evidence that had not been produced before. It was his submission that the judgment in *HCCC 89 of 1996* only confirmed that the 17 members proved their counterclaim on adverse possession. The Plaintiffs filed an appeal that was equally dismissed. He submits that from the said decisions, there was no mention of the 17 beneficiaries and unless the said issue is addressed, several people will also file similar suits to be included as beneficiaries. He submits that the Applicant exercised due diligence and ought to be heard on merit. He relied on the case of *Khalif Sheikh Adan V Attorney General* [2019] eKLR.
6. The second issue on costs, he submits that each party bears their own costs.
7. Counsel for Plaintiffs/Respondents filed his submissions dated 10th March, 2025 where he identified three issues for determination. The first issue was whether the firm of Mongeri and Company Advocates are properly on record. He submits in the negative and argues that the said firm came on record post judgment as the firm on record at the time was Karanja Mbugua & Co. Advocates. He relied on Order 9 Rule 9 of the Civil Procedure Rules and the case of *S.K Tarwadi V Veronica Muebiemann* [2019] eKLR. He also relied on the case of *Monica Moraa V Kenindia Assurance Co. Ltd* [2010] eKLR and *Jyott Jigish V Dickson Odinga Chiro & 2 Others* [2022] eKLR.
8. It was his submission that the change of advocates post judgment was to be done through an application that sought leave to come on record and through consent by both parties which ought to be adopted as an order of the court. He submits that the said firm of Mongeri Advocates purported to file an undated consent which consent was never adopted as an order of the court.
9. The second issue was whether the application merits the orders for review. He relied on Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the *Civil Procedure Rules*. He also cited the case *Republic V Advocates Disciplinary Tribunal ex parte Apollo Mboya*. He submits that the documents the Applicants want to produce are not new materials or evidence. He argues that they were attached to the Applicant's defence that had been filed on 23rd January, 2024 as their list of documents. He submits that the Applicants had been given sufficient time to file their defence but they failed to do so. He submits that they cannot blame their advocate for failing to file since it was their case and they ought to have followed up with the advocate. He further submits that the application was not filed promptly as it appears to be an afterthought after they failed to secure a stay of execution through their application dated 28th October, 2024. He submits that prayer 6 ought to be sought in a substantive suit which the Applicants failed to file their counter claim.



10. The final issue on costs, it was counsel's submission that the application be dismissed with costs.

### **Analysis and Determination**

11. This court has considered the application and is of the view that the main issue for determination is whether the Applicants are deserving of the review orders sought for.

12. The jurisdiction of this court for review of orders is provided for under Order 45 Rule 1 (1) of the [Civil Procedure Rules](#) which provides as follows:

“1. Application for review of decree or order

(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.” It is this court's view that the basis of an application for review of an order is on the recovery of new and important matters or evidence which after due diligence, was not within the Applicants knowledge or could not be produced by them at the time when the order was made. Further an application for review may also be made on account of some mistake or error apparent on the face of the record, or for any other sufficient reason.

13. The Applicants claim that the list of members was not admitted during hearing of the case and contend that it was necessary for the same to be admitted in evidence. The Respondent on the other hand contends that the list of members was not new evidence since it formed part of the Applicants' list of documents that was not admitted since the Applicants' failed to file their defence on time. In the Court of Appeal case in [Otieno, Ragot & Company Advocates v National Bank of Kenya Limited](#) [2020] eKLR, the court held as follows:

“...The respondent's case is now about an error on the face of the record. The learned Judge should have seen straightaway that the respondent had changed its case from one of review based on discovery of new and material evidence to one of an error on the part of the court apparent on the face of the record. He should have seen that the application as presented could not succeed and he should not have allowed the respondent to shift the goal post midway without amending the application thereby denying the appellant opportunity to respond. An application for review must be specific on the ground on which it is brought.” [Emphasis mine]

14. I have perused the court record and it is not in dispute that on the Applicants' statement of defence was never filed prior to hearing and determination of the case. The Applicants contend that the mistake



of their previous counsel who failed to have the list of documents filed on time should not be visited upon them. It is clear from the court records that the then counsel on record for the Applicants' had been given sufficient time to file the same but failed to do so and the matter was heard and determined without the documents. I have also perused the Defence and list of documents dated 22nd January, 2024 and it is a fact that the list of members formed part of the Applicants' documents to be relied on during hearing.

15. It is therefore this court's view that the Applicants have not placed any new and important matter or evidence before the court for consideration. They have not demonstrated that there was an error apparent on the face of the record and no other sufficient reason has been placed before the court to warrant review the order of 16th October, 2024.
16. I have also confirmed from the court record that a consent to come on record for the firm of Mongeri & Co. Advocates in place of Karanja Mbugua & Co. Advocates was filed on 6th February, 2025. I thus find that the Applicants advocates are properly on record.
17. It is this court's view that with regard to prayer 3 of the present application, the same was in fact a typo error and the same is allowed to the extent that the 1st Defendant shall read Lekishon Ole Linti alias CLLR. John Ledidi in place of Lekishon Ole Rakita Sanoe.
18. The upshot of the foregoing is that the present application partially succeeds in terms of prayer 3 only. Each party to bear its own costs. It is so ordered.

**SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO**

