



REPUBLIC OF KENYA



**Brek v Aroi (Suing in Her Capacity as the Administrator of the Estate of Yusuf Avumai Arai)  
(Environment & Land Case 13 of 2023) [2025] KEELC 4582 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4582 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 13 OF 2023**

**EK MAKORI, J  
JUNE 12, 2025**

**BETWEEN**

**FARID ABDALA BREK ..... PLAINTIFF**

**AND**

**FATIMA YUSUF AROI (SUING IN HER CAPACITY AS  
THE ADMINISTRATOR OF THE ESTATE OF YUSUF AVUMAI  
ARAI) ..... RESPONDENT**

**RULING**

1. The application dated March 17, 2025, aimed to have this matter reopened so that a survey report could be prepared and the court could visit the site of the suit property to determine the actual location and position of property MN/III/539R.
2. The application is supported by the attached affidavit sworn on the same date by the applicant, Fatma Yusuf Aroi.
3. The application was opposed; a replying affidavit was filed by the respondent, Farid Abdalla Brek, on April 15, 2025, contradicting the claims made by the applicant.
4. The subject was addressed orally by counsel Mr. Hamza representing the Applicant and Mr. Mwanzia representing the Respondent.
5. Based on the materials presented to me, the issues I frame for the determination of this suit are whether to order the reopening of this matter and the question of costs.
6. The applicant in this application argues that the court cannot determine the actual location and identity of the suit property, as the applicant in the main suit claims that the suit property is MN/III/539R, not MN/III/539. According to the respondent in the main suit, the applicant in this



application asserts that these are the same plots. Therefore, a licensed surveyor is necessary to clarify the position, and the court should visit the site for a visual assessment.

7. Conversely, the respondent in this application contends that the parties agreed on November 19, 2024, to canvass this matter through written submissions, and that the documents submitted should be accepted as evidence. The respondent/applicant has previously submitted materials, which the applicant/respondent intends to refute. Furthermore, a survey report has already been submitted, and if that report were to be contested, the opportunity to do so has now lapsed.
8. While faced with a similar application, the court in *Susan Wavinya Mutavi v Isaac Njoroge & Nairobi City County Government* [2020] KEELC 8 (KLR) held that:

“Over the years, Kenya’s superior courts and courts in the Commonwealth have developed principles which guide the exercise of jurisdiction to re-open a case and receive additional evidence in a civil trial court. First, the jurisdiction is a discretionary one and is to be exercised judiciously. In exercising that discretion, the court is duty-bound to ensure that the proposed re-opening of a party’s case does not embarrass or prejudice the opposite party. Second, where the proposed re-opening is intended to fill gaps in the evidence of the applicant, the court will not grant the plea. Third, the plea for re-opening of a case will be rejected if there is inordinate and unexplained delay on part of the applicant. Fourth, the applicant is required to demonstrate that the evidence filed seeks to introduce could not have been obtained with reasonable diligence at the time of hearing of his case. Fifth, the evidence must be such that, if admitted, it would probably have an important influence on the result of the case, though it need not be decisive. Lastly, the evidence must be apparently credible, though it need not be incontrovertible. (See

- (i) *Mohamed Abdi Mohamud v Ahmed Abdullahi Mohamad & others* [2018] eKLR;
- (ii) *Samuel Kiti Lewa v Housing Finance Company of Kenya Limited & another* [2015] eKLR;
- (iii) *Ladd v Mashall* (1954) 3 All ER 745);
- (iv) *Reid v Brett* [2005] VSC 18; (v) *Smith v New South Wales Bar Association* [199] 176 CLR 256; and (vi) *EB v CT (No 2)* [2008] QSC 306.”

9. As previously indicated, the parties have consented to address this matter through written submissions. Mr. Mwanzia, representing the applicant in the principal case, has adhered to this arrangement, while Mr. Hamza has not; instead, he submitted the present application on behalf of his client. After a thorough examination of the submissions presented by the parties and considering the current phase of this matter while exercising judicial discretion, it will be unnecessary to reopen this matter, as the issues presented can be effectively addressed in the written submissions provided by the parties. I will agree with Mr. Mwanzia’s submissions that reopening this matter would merely serve to advance the applicant’s claim in relation to the submissions already on record, which can be adequately explored during the submissions phase. This realization respects the parties’ consent and the process they agreed upon to follow.
10. The application dated March 17, 2025, is dismissed with costs.

**DATED, SIGNED, AND DELIVERED ELECTRONICALLY IN MALINDI ON THIS 12TH DAY OF JUNE, 2025.**



**E. K. MAKORI**

**JUDGE**

**In the Presence of:**

**Mr. Mwanzia for the Applicant**

**Ms. Hamza for the Respondent**

**Happy: Court Assistant**

