



REPUBLIC OF KENYA



KENYA LAW
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**Gitau v Ng'ang'a & 2 others (Environment and Land Case 291 of 2013)
[2025] KEELC 6483 (KLR) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6483 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE 291 OF 2013
MAO ODENY, J
SEPTEMBER 30, 2025**

BETWEEN

SAMUEL MWEHIA GITAU PLAINTIFF

AND

JOHN MUTURI NG'ANG'A 1ST DEFENDANT

BENSON M KANG'ETHE 2ND DEFENDANT

JAMES NJIRAINI KARANJA 3RD DEFENDANT

RULING

1. This ruling is in respect of two applications, namely, the Plaintiff's Notice of Motion Application dated 9th May, 2025 which seeks the following orders:
 - a. Spent
 - b. That the judgment and decree herein dated 20th November, 2018 be reviewed and/or set aside.
 - c. That provision be made for the costs of this application.
2. The application is supported by the annexed affidavit of Samuel Mwehia Gitau sworn on 9th May, 2025, who deponed that the lack of Land Control Board consent in relation to the land transaction in respect of the agreement dated 13th July, 2007 renders the transaction legally void and totally unenforceable, hence the court should review its judgment dated 20th November, 2018.
3. James Njiraini Karanja, the 3rd Defendant, filed a Replying Affidavit sworn on 6th June, 2025, and stated that the court is functus officio, as no new evidence has been tendered as a ground of review and the application is an abuse of the court process. It was his deposition that no error has been pleaded which affects the issuance of the orders, and such a remedy lies in filing an Appeal in the Court of Appeal.



- The 3rd Defendant deponed that the application has not been timeously brought as it has been filed after more than seven years from the date of judgment.
4. The second application is the Defendants' Notice of Motion application dated 30th May, 2025 which seeks the following orders:
 - a. Spent
 - b. Spent
 - c. That in contemplation with the directions of the honourable court dated 20/11/2018 the defendant herein be pleased to deposit Ksh 80,000/= to the courts account for purposes of concluding the transaction.
 - d. That the amount deposited in court be only accessible upon the parties herein confirming completion of the transaction.
 - e. That in furtherance with the directions of the court dated 20/11/2018 this honourable be pleased to further extend the timelines of seeking the Land control board consent as well as completion within 8 months. (sic)
 - f. That further in contemplation of the directions of the court dated 20/11/2018. (sic)
 - g. That this honourable court be pleased to direct the plaintiff advocate transmit all the signed completion documents to the defendant advocate for purposes of expediting the transaction.
 - h. That the Honourable Court be pleased to issue any other order as may seem just
 - i. That costs of this application be provided for.
 5. The application is supported by the annexed affidavit of James Njiraini, the 3rd Defendant sworn on 30th May, 2025, where he deponed that the Defendants are desirous of concluding the transaction and yearn for the permission of the court to deposit the balance of Ksh 80,000/= in court to act as security for effecting the terms of the judgment by the Plaintiff.
 6. Counsel for the Plaintiff filed Grounds of Opposition dated 10th June, 2025, and stated that the application lacks merit and prayed that it be dismissed or struck out with costs to the Plaintiff.

Plaintiff's Submissions

7. Counsel for the Plaintiff filed submissions dated 10th June, 2025, and submitted that the extended period granted by the court for seeking and obtaining the consent of the relevant Land Control Board having expired, the controlled transaction between the parties has now been rendered void by operation of law.
8. Counsel further submitted that the lack of consent of the Land Control Board is sufficient reason for the court to review and set aside the Judgment dated 20th November 2018. It was counsel's submission that according to the supporting affidavit sworn on 9th May 2025, the Plaintiff only discovered that the application for consent of the Land Control Board had never been lodged, even though the defendants were always in possession of the relevant forms that the Plaintiff had already signed on 21st March 2025. Counsel urged the court to allow the Plaintiff's application for review and setting aside the Judgment dated 20th November 2018.
9. In respect of the Defendant's application dated 30th May, 2025, counsel submitted that granting the defendant's the prayers sought without reviewing the judgment would be a contradiction in terms.



Counsel submitted that without the consent of the relevant Land Control Board for the controlled transaction, the prayer for leave to deposit the balance of the purchase price in court cannot be granted.

10. Mr. Okeke submitted that the statutory power to extend time for making an application to the relevant Land Control Board has only been granted in respect of the original six-month period and the court already exercised that power in the judgment dated 20th November, 2018.
11. It was counsel's submission that no evidence has been provided to show that any signed completion documents are in the Plaintiff's advocates' possession. Further that the Plaintiff's advocate is not a party to this suit and there is no basis for ordering counsel to transmit completion documents. Counsel urged the court to dismiss the Defendants application dated 30th May, 2025 with costs to the Plaintiff.

Defendants Submissions

12. Counsel for the Defendants filed submissions dated 10th June, 2025 and supplementary submissions dated 14th June, 2025, and submitted that the application dated 9th May, 2025 lacks merit and should be dismissed with costs. Counsel also submitted that the application dated 30th May, 2025 is merited and should be allowed with costs.
13. It was counsel's submission that the court has unfettered powers to extend timelines for seeking the consent of the Land Control Board, and relied on Article 162 (2b) of the Constitution of Kenya, Section 8 of the Land Control Act and Section 4 of the Environment and Land Court Act.
14. Counsel also relied on the case of Willy Kimutai Kitilit vs Michael Kibet 2018 eKLR, and submitted that no prejudice will be suffered by the Plaintiff if leave is granted to deposit the purchase balance in court. Counsel further submitted that an advocate's duty to justice calls for his unwavering attention, in assisting litigants to conclude disputes in court, which would essentially call upon the transmission of documents.

Analysis and Determination

15. The issues for determination are:
 - a. Whether this court should review /set aside the judgment and decree dated 20th November, 2018?
 - b. Whether this court should extend the timelines for seeking the Land Control Board consent as well as completion within 8 months?
 - c. Whether the court should grant leave for the Defendants to deposit the balance of the purchase price amounting to Kshs 80,000/ in court
 - d. Whether the court should issue directions to the Plaintiff's Advocate to transmit all signed completion documents to the Defendants' advocate.
16. The brief background of this case is that, by a Plaint dated 5th April 2013, the Plaintiff herein sued the Defendants jointly and severally seeking the following orders:
 - a. A declaration that the land transaction was void ab initio and the same cannot be completed as it contravenes the provisions of the Land Control Act Cap 302 Laws of Kenya.
 - b. An order for permanent injunction restraining the Defendants by themselves their agents and / or legal representatives from trespassing into, occupying, cultivating, remaining on and/or in any way whatsoever from interfering with 2.7 acres of that parcel of land known as NAKURU/ ROTHARINI/3



- c. Costs and interest
 - d. Any other relief the honourable court may deem fit and just to grant
17. This matter was heard and a judgment delivered on 20th November, 2018 where Justice Dalmas Ohungo issued the following orders:
- a. The plaintiff's case is dismissed.
 - b. Time within which to apply for the consent of the Land Control Board in respect of the transaction comprised in the Land Sale Agreement dated 13th July 2007 is hereby extended by a period of 6 (six) months. The extended period to run from the date of delivery of this judgment.
 - c. The plaintiff is hereby compelled to execute all the necessary documents and take all necessary steps to ensure completion of the transaction comprised in the Land Sale Agreement dated 13th July, 2007. Such execution and such steps to be done within 30 (thirty) days from the date of delivery of this judgment. In default, the Deputy Registrar of this court to execute such documents and take such steps in the place of the plaintiff.
 - d. Upon certificate of title in respect of the portion of Nakuru/Rotharini/3 measuring 2.7 acres being issued to the 3rd defendant, the 3rd defendant to immediately pay to the plaintiff Ksh 80,000 being the balance of the purchase price.
 - e. I award the defendants costs of the suit and interest thereon.
18. The court will first deal with the Plaintiff's Notice of Motion dated 9th May 2025. It is the Plaintiff's contention that the Defendants have never presented the application for consent to sub-divide and/or sell the suit property to the relevant Land Control Board in spite of the window provided by the court in the judgment dated 20th November, 2018. Further, that the transaction is null and void hence the judgment should be reviewed or set aside.
19. Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules govern applications for review. The court has the power to order a review of an order or decree. Section 80 of the *Civil Procedure Act* provides as follows:
80. Any person who considers himself aggrieved-
- (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
 - (b) by a decree or order from which no appeal is allowed by this Act,
- May apply for a review of judgement to the court, which passed the decree or made the order, and the court may make such order thereon as it thinks fit.
20. Order 45 Rule 1 of the Civil Procedure Rules, 2010 provides as follows:
- (1) Any person considering himself aggrieved-
- By a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- 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 review of judgement to the court which passed the decree or made the order without unreasonable delay.”

21. Section 80 gives the power of review while Order 45 sets out the rules. It should be noted that the Rules specify the grounds for review, by laying down the jurisdiction and scope of review.
22. The rules limit review to the following grounds:
 - (a) 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 him at the time when the decree was passed or the order made or;
 - (b) on account of some mistake or error apparent on the face of the record, or
 - (c) for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without un reasonable delay.
23. If an Applicant meets the laid down criteria for review then the court will not hesitate to grant an order for review. The applicant has not stated any of the above grounds for review to warrant the court to order a review of the judgment dated 20th November 2018.
24. There is no averment that there has been a discovery of any new and important matter or evidence after the exercise of due diligence which was not within his knowledge and that such evidence could not have been produced at the time the judgment was passed.
25. Counsel submitted that the fact that there was no Land Control Board consent to the transaction has made the same null and void, is a fact that was determined in the judgment and the court gave specific orders for the enlargement of time within which to apply and obtain a Land Control Board consent. This is not new evidence, which can be used to review a judgment.
26. Similarly, the Applicant did not state that there is a mistake or error apparent on the face of the record. The court also notes that this judgment was delivered on 20th November 2018, which is more than 7 years ago. The applicant has not offered any sufficient explanation for the inordinate delay in filing this application. Why did the parties not act on the directions or implement the decree within the prescribed timelines in the judgment. Those timelines were time-specific which if not adhered to were to lapse. The parties got the judgment, went on a deep slumber, and woke up after 7 years. This is a typical example of inordinate delay.
27. In the case of Tokeshi Imbuka Mambili & 2 others v Joseph Onzeke Sambwa & another [2004] KEHC 392 (KLR), the court held that:
 - i. In order to obtain a review an applicant has to show to the satisfaction of the court that there has been discovery of new and important matter or evidence which was not within his knowledge or could not be produced at the time when the order to be reviewed was made. An applicant may have to show that there was a mistake or error apparent on the face of the record or for any other sufficient reason.(Emphasis added)
 - ii. Where the application is based on sufficient reason it is for the Court to exercise its discretion.
28. I find that the Applicant has not met the threshold for review and setting aside on the Judgment dated 20th November 2018 and therefore the application is dismissed with each party bearing their own costs.



29. On the second application by the Defendant dated 30th May, 2025 for leave to further extend time within which to apply for a Land Control Board Consent, leave to deposit Kshs 80,000/ being the balance of the purchase price and direction to the Plaintiff's Advocate to transmit all signed documents for completion of the transaction, the Defendants has not satisfactorily told the court why they did not implement the decree of the judgment of 20th November 2028 within the prescribed time. This is an inordinate delay.
30. If the Defendants faced any challenges during the execution, then they should have approached the court for orders before the expiry of the time set out within which to comply. Coming to court after 7 years to ask for the same orders that had been granted in the judgment is an abuse of the court process.
31. I have considered both applications, the submissions and the relevant authorities and find that they lack merit. Consequently, the same are dismissed with each party bearing their own costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 30TH DAY OF SEPTEMBER 2025.

M. A. ODENY

JUDGE

