



**Mugumoini Farmers Co Ltd v Inshwil Builders Engineering Ltd;
Ruitha & another (Interested Parties) (Environment and Land Case
67 of 2018) [2025] KEELC 6624 (KLR) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6624 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND CASE 67 OF 2018
MN GICHERU, J
SEPTEMBER 30, 2025**

BETWEEN

MUGUMOINI FARMERS CO LTD PLAINTIFF

AND

INSHWIL BUILDERS ENGINEERING LTD DEFENDANT

AND

EPHRAIM WAI THAKA RUTHA INTERESTED PARTY

CHARLES WANGONDU SAMSON INTERESTED PARTY

RULING

1. This ruling is on the notice of motion dated 23-4-2025. The motion which is by the Plaintiff is brought under Articles 2, 10, 47, 159 (2) (d) of the *Constitution* of Kenya 2010, Sections 11 of the *Fair Administrative Action Act*, 1A, 1B and 80 of the *Civil Procedure Act*, Order 45(1) of the *Civil Procedure Rules* and all other enabling provisions of the law.
2. The motion seeks two residual prayers.
 2. That the Court be pleased to review , vary and/or set aside its judgment delivered on 29-9-2022 and declare the Plaintiff as the sole proprietor of Kakuzi/Kirimiri Block 7/37 and its subdivisions Kakuzi/Kirimiri blocks 7/381, 7382, 7/250 and 7/445 and revoke its title and those of the resultant subdivisions and order for the same to revert back to the Plaintiff.
 3. That this Court be pleased to grant any other relief that it deems fit.
3. The motion is based on twenty(20) grounds and is supported by an affidavit of Joseph Kamande, the Chairperson of the Plaintiff, dated 23-4-2025. The gist of the motion is as follows. One, the Plaintiff's



suit which sought the revocation of the Defendants title to the suit parcels was dismissed by this Court on 22-9-2022. Two, the suit was pegged on the ground that the sale agreement was signed by directors who had ceased to be so as at the date of the agreement thereby lacking the requisite authority to transact on behalf of the Plaintiff. The said agreement is dated 11-7-2023 yet the executing directors had been ousted from office on 17-5-2003 following a board resolution of the same date. The Plaintiff's effort to obtain vital documents to prove this crucial aspect of the case proved futile. This information is now available. Also available are proceedings from Thika ELC 245 of 2017(formerly Nairobi HCCC 3086/1994)which detail the genesis of the sale of the suit land. They also show that on the date of the sale agreement, there was a prohibitory order over the suit land which was lifted in the year 2009 which is 6 years after the sale agreement was executed. Further the proceeds of the sale were intended to settle the decretal sum arising out of Nairobi HCC No. 3086/1994(*Erastus Ndubiu trading as Emac Traders vs Mugumoini Farmers*) which remains unpaid todate and the debt stood at over Kshs. 13 Million on 20-1-2021. Three the Plaintiff stands to suffer double prejudice in the event that this motion is not allowed. Finally, even though the Plaintiff had filed Nyeri Appeal No. 155/2022 at the Court of Appeal, it was withdrawn in the year 2025 on the realization that the same would not allow the Plaintiff tender the new evidence that has been obtained late.

4. The motion is opposed by the Defendant which has filed a preliminary objection dated 5-6-2025. The preliminary objection has the following five points of law.
 - i. This Court has no jurisdiction to hear the application dated 23-4-2025 as it functus officio have delivered judgment on 29-9-2022.
 - ii. Under section 80(a) of the *Civil Procedure Rules* an application for review cannot be entertained as the Plaintiff filed a notice of appeal against the whole of the said judgment and eventually filed Nyeri Civil Appeal No.158 of 2022 which was withdrawn with costs to the Defendant and interested parties.
 - iii. An application filed by the Plaintiff to the Court of Appeal was dismissed with costs on 15-3-2024.
 - iv. The application is incompetent, bad in law, filed in Court in bad faith and as an afterthought and has no merit.
 - v. There is inordinate delay in filing the application dated 23-4-2025 as the judgment sought to be reviewed was delivered nearly 31 months before the application was filed.
5. Counsel for the parties filed written submissions. Those by the Plaintiff are dated 3-7-2025 and the ones by the Defendant and the interested party are dated 22-7-2025.
6. I have carefully considered the motion in its entirety including the grounds, the affidavits and annexures, the written submissions and the law cited therein. I will treat the five points of law as the issues for determination as I also consider the reasons for seeking review.
7. According to the Plaintiff, there is discovery of new evidence that was not available to it during the pendency of this suit. This new evidence comprises the following.
 - i. Copy of notification of change of directors and secretaries of the Plaintiff that was lodged with the Registrar of companies on 9-5-2003.

This copy of notification of change of directors and secretaries was obtained on 17-2-2025 after the complaint lodged a complaint with the Director of Criminal Investigations vide a letter dated 31-12-2024.



- ii. Proceedings from Thika ELC 245 of 2017(formerly Nairobi HCC 3086/1994).
8. The foregoing paragraph shows that the Plaintiff's motion is based on discovery of new evidence, which was not within the Plaintiff's knowledge or could not be produced by it at the time when the decree was passed.

For the motion to meet this threshold, the Plaintiff must show why it could not obtain this copy of notification and the proceedings in the Thika case at the time it filed this suit or even during the proceedings of this case. This case having been filed in the year 2018, it was expected that records of the year 2003 and proceedings dating back to the years 1994 and 2017 would be available to the Plaintiff. A suit is such a serious undertaking that a party that files it must have all the evidence in support of its case ready at the time of the filing of the suit This is a requirement of Order 3 rule 2 of the Civil Procedure Rules. It provides as follows.

“ All suits shall be accompanied by-

- (c) Copies of documents to be relied on at the trial...

Additionally, during the trial, if a party convinces the court that it has good reasons for adducing evidence that was not filed together with the plaint, the court would on application by such party allow such evidence.

It is quite different for a party to come to court more than 2 ½ years later and seek to review a judgment on account of evidence that was not filed at the time of filing of the suit almost seven (7) years earlier. What makes it more unusual is failure to give clear and convincing reasons for this drastic move. As far as the other parties are concerned, the case is over and even the appeal has been withdrawn.

9. A look at the judgment dated 29-9-2022 will show that at pages 22-32, the trial court extensively dealt with the question,

- iv. Whether there was fraud in execution of the sale agreement.

It was the finding of the trial court that there were resolutions by the Plaintiff authorizing the sale of the suit property. There was no evidence to show that the sale required a special resolution by members. The trial court was cognizant of Section 34 of the Companies Act that insulates a person dealing with a company from inquiring into the limitation of company officials. In fact the court found that the most important evidence that the Plaintiff failed to file was the memorandum of association which would have defined its external relationships.

From the above, it is clear to me that the evidence sought to be adduced will not be of much assistance because the court made findings on the issue the Plaintiffs seeks to prove by this new evidence and an appeal would better deal with this than a review would.

10. In the submissions dated 3-7-2025, the Plaintiff has addressed other grounds for seeking review such as error apparent on the face of the record but I find that ground is not anywhere in the grounds or in the supporting affidavit.

11. I am persuaded by the argument by the Defendant that the moment party to a suit files an appeal, such party loses the right to seek review of the judgment or order appealed against. Order 45 rule 1 (a) and (b) Civil Procedure Rules is categorical that once a party prefers an appeal, there is no room for review, it states as follows very clearly.

“ Any party considering himself aggrieved –



- a. By a decree or order from which an appeal is allowed, but from which No Appeal Has Been Preferred.

The Plaintiff has not cited any precedent that holds that where an appeal has been withdrawn, then the right for review accrues. I have also not come across any precedent that can oust such clear provision of law.

12. For the above stated reasons, I find no merit in the motion dated 23-4-2025 which I dismiss with costs to the Defendants and the interested parties.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 30TH DAY OF SEPTEMBER, 2025.

M.N. GICHERU JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Plaintiff's Counsel – Amino

Defendant's Counsel – Mr Ndurumo – Present

