



REPUBLIC OF KENYA



**KENYA LAW**  
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**Njuguna v Ngetich (Environment and Land Case 43 of 2020)  
[2025] KEELC 6307 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6307 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND CASE 43 OF 2020  
A OMBWAYO, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**JULIA WANGARI NJUGUNA ..... APPLICANT**

**AND**

**MATHEW NGETICH ..... RESPONDENT**

**RULING**

**Brief Facts**

1. The Applicant filed the instant application dated 15th May, 2025 seeking orders the Honourable court be pleased to set aside the ex-parte proceedings and judgment herein delivered on the 27th April, 2023 and allow the applicant to defend the suit and that costs herein be provided for. The Application is based on grounds set out and supported by the Affidavit of Matthew Ngetich the Applicant herein sworn on 16th May, 2025. He is the legal owner of the suit property and that the matter went for mediation and the Respondent took another hearing date which he was not aware. The judgment was delivered against him yet he was unwell at the time. He stated that he was discharged from the hospital but continued to go for check-ups but he is now mentally stable to pursue his case in court if given an opportunity. He stated that he had conducted a search and that the Respondent was yet to fully execute and implement the judgment. He also stated that he had a good defence and counter-claim that raised triable issues. He stated that it would be unfair if he was not heard as his failure to attend court was not deliberate but due to illness which affected his state of mind.

**Response**

2. The Respondent filed her Replying Affidavit sworn on 29th May, 2025 where she averred that the instant application was a waste of the court's time since it had general averments that lacked supporting evidence. She further averred that the application was an afterthought since she had requested for court order on 16th May, 2025 hence the application was an attempt to derail the enforcement of the



said orders. She averred that parties engaged a mediator and at the time to record a settlement, the Applicant failed to avail himself or his advocate hence the collapse of the mediation process. She further averred that the Applicant was not the lawful owner of the suit property as the entries were allegedly fraudulently obtained. She added that the hospital records indicated that the Applicant was unwell from 16th March, 2023 to 30th March, 2023 while judgment was delivered on 27th April, 2023. She also averred that service of all pleadings were served through his advocate on record. She added that the Applicant's statement of defence and counterclaim dated 24th April, 2020 was considered by the court in reaching its determination. She averred that the judgment was final and the Applicant could not re-open it as sought. She also averred that the Applicant failed to satisfy the threshold for grant of the orders sought. She urged the court to dismiss the application with costs.

### **Submissions**

3. None of the parties filed their submissions.

### **Analysis and Determination**

4. This court has carefully considered the application and the main issue for determination is whether the Applicant is deserving of the review orders sought for.
5. 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.”
6. 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 Applicant's 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.
7. The Applicant contends that he was unwell at the time the judgment was delivered on 27th April, 2023. He added that he was later discharged from hospital but continued to go for check-ups. It was his contention that it would be in the interest of justice for the judgment to be set aside so that he could be accorded a chance to defend himself. The Respondent on the other hand contends that the application was an afterthought and that the claim by the Applicant lacked supporting evidence.



8. Order 12 rule 7 of the Civil Procedure Rules provides as follows:

Where under this order judgment has been entered or a suit dismissed, the court, on application, may set aside or vary the judgment or order upon such terms as may be just”

9. It is important for the Applicant to prove that non-attendance in court was not deliberate but occasioned by reasonable excuse or omission. In the case of Kenya National Private Security Workers Union V Security Guards Services Limited [2020] KEELRC 659 (KLR) the court held as follows:

It is trite that, the court exists to do justice to all the parties and it has unfettered discretion to set aside its judgments upon terms. In *Shah v Mbogo and another* [1966] EA 166, Harris J set out the guiding principle on a Judge’s discretion in setting aside a judgment, thus: “I have carefully considered the principles governing the exercise of the courts’ discretion to set aside a judgment obtained exparte. This discretion is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertent or excusable mistake or error, but is not designed to assist a person who has deliberately sought, whether by evasion or otherwise to obstruct or delay the course of justice.” I have keenly perused the court record and it is not in dispute that judgment was delivered on 27th April, 2023 in the absence of the Applicant. However, the Applicant did not adduce any evidence to prove that he was unwell hence unable to attend or handle his case. It is this court’s view that the Applicant has not met any of the three requirements for review. In the circumstance, I find that the Applicant has not established any reason to warrant review of this court’s orders of 27th April, 2023. The upshot of the foregoing is that the instant application is without merit and the same is dismissed with costs to the Respondent.

10. It is so ordered.

**SIGNED BY/FOR:**

**HON. JUSTICE ANTONY O. OMBWAYO**

**NAKURU ENVIRONMENT AND LAND COURT**

**DATE: 2025-09-25**

