



Agalo v County Government of Trans-Nzoia & 9 others (Environment and Land Case 35 of 2017) [2025] KEELC 6799 (KLR) (8 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6799 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE 35 OF 2017
CK NZILI, J
OCTOBER 8, 2025**

BETWEEN

PETER MIDIMO AGALO PLAINTIFF

AND

COUNTY GOVERNMENT OF TRANS-NZIOIA 1ST DEFENDANT

COUNTY LAND REGISTRAR, TRANS-NZIOIA 2ND DEFENDANT

THE HON ATTORNEY GENERAL 3RD DEFENDANT

**CABINET SECRETARY, MINISTRY OF LANDS AND PHYSICAL
PLANNING 4TH DEFENDANT**

THE CHIEF LAND REGISTRAR 5TH DEFENDANT

THE DIRECTOR OF PHYSICAL PLANNING 6TH DEFENDANT

THE COUNTY SURVEYOR, TRANS-NZIOIA 7TH DEFENDANT

THE DIRECTOR OF SURVEY 8TH DEFENDANT

THE PHYSICAL PLANNER TRANS-NZIOIA 9TH DEFENDANT

THE INSPECTOR GENERAL OF POLICE 10TH DEFENDANT

RULING

1. The applicant, by a notice of motion dated 25/6/2025, seeks temporary orders of stay of execution, setting aside the judgment of 11/6/2025, and in the alternative, a grant of order (d) of the amended plaint or compensation at the current market value or allocation of an alternative plot instead of the compulsory acquisition of L.R. No. Kitale Municipality Block 4/413.



2. The grounds as adduced on the face of the motion and in the affidavit sworn by the applicant on 25/6/2025 are that the judgment was obtained through fraud and misrepresentation by the 1st respondent that the applicant's title was irregular, illegal, and unlawful. The applicant avers that he holds a valid certificate of title; his trial bundles were not considered; and that the dismissal of the suit and counterclaims amounted to a negative order incapable of execution or appeal.
3. Further, the applicant avers that he risks dispossession of property without compensation or alternative land. The applicant also deposes that the 1st respondent's counterclaims were baseless, frivolous, unsubstantiated, and lacking particulars of fraud.
4. The applicant deposes that, based on the provisions of Section 53 of the Transfer of Property Act (1882), the 1st respondent did not prove that the applicant is a land fraudster and that a title is held as conclusive evidence of proprietorship under Section 23 Registration of Titles.
5. The applicant deposes that a certified copy of a registered instrument should be received in evidence as the original and relies on the 40 documents in the trial bundle. The applicant also relies on Articles 40, 47, 159 of *the Constitution*, Sections 1, 1A, 3, 3A, 63(e) of the *Civil Procedure Act*, Order 1 Rule 10(2), Order 12 Rule 7, Order 22 Rule 25, Order 37 Rules 1 and 2(c), Order 40 Rules 1, 2 and 3, Order 51 Rules 1, 2 and 10 of the Civil Procedure Rules, Sections 24 and 83 of the Registration of Titles Act, Section 103 of the *Land Registration Act* and Section 53 of the Transfer of Property Act (1882). Again, the applicant avers that his title is valid, unchallenged, and indefeasible since the defendants did not produce cogent proof of fraud.
6. The 1st respondent opposes the application through a replying affidavit sworn on 14/6/2025 by Karani O. Aggrey, advocate for the 1st defendant. He avers that the applicants' suit and the counterclaim were dismissed since they were not substantiated and lacked merit. Further, the deponent avers that the applicant had filed a notice of appeal; thus, this court is functus officio and cannot sit on an appeal of its own judgment. The notice of appeal is attached as annexure marked KOA I.
7. Further, it is deposed that the issues raised by the applicant are similar to those determined in the further affidavit, and therefore, the same cannot be issued post judgment.
8. The applicant has also filed a notice seeking leave to discontinue the appeal under Order 25 Rule 2(2) of the Civil Procedure Rules.
9. The applicant, in a reply to the 1st respondent's replying affidavit dated 27/9/2025, avers that he is the registered owner of the suit land, whose rights are protected under Article 40 of *the Constitution*. The applicant further avers that the application is premised on fraud, misrepresentation, procedural irregularity, and discovery of new and material evidence. He relies on *Kanu Patel v Sonalax Enterprises Ltd (2016) eKLR*, on the proposition that fraud vitiates all solemn acts.
10. The applicant avers that he was not served with the 1st respondent's written submission relied upon by the court in violation of Order 7 Rule 5 of the Civil Procedure Rules and principles of natural justice. Equally, the applicant avers that the judgment amounts to a default judgment and thus this court has the power to set aside under Order 10 Rule 11 and Order 12 Rule 7 of the Civil Procedure Rules.
11. Further, the applicant avers that contrary to Articles 47 and 50 of *the Constitution*, the court was biased and unfair to accept submissions filed past the deadline, yet his rights to be heard were prejudiced. The applicant avers that the unserved written submissions contained allegations of fraud, which constitute new evidence where and given an opportunity to respond, the outcome of the suit would have been different.



12. The applicant avers that the court failed to adjudicate on the amended plaint with prayers for compensation or alternative land. That the omission is contrary to Order 21 Rule 4 of the Civil Procedure Rules and *Kibutiri -vs – Kibutiri* (1983) eKLR. Again, the applicant avers that the court has inherent jurisdiction under Section 3A of the *Civil Procedure Act* to correct such injustices.
13. Regarding the withdrawal of the notice of appeal, the applicant avers that it does not estop him from seeking reliefs sought.
14. The applicant, in written submissions and further submissions dated 30/6/2025, submits that the judgment was obtained through fraud, misrepresentation, and material non-disclosure by the 1st respondent and that the court did not evaluate the evidence on record.
15. The applicant submits that the defendants did not produce the RIM map, survey maps, or reports despite notice. Further, the applicant submits that the defendants failed to object to, revoke, or recall his title, or provide evidence on fraud and damages for defamation for labeling him a fraudster.
16. The applicant set out five issues for determination. On fraud, he submits that fraud was not proved in accordance with the legal provisions; that compulsory acquisition requires compensation, since he was declared the lawful owner of the suit land, and thus, the judgment should be set aside and the 1st respondent ordered to pay compensation at Kshs. 100,000,000/= or provide an alternative plot and award damages for defamation.
17. The applicant is seeking a temporary stay of the judgment of this court delivered 11/6/2025, which he terms as a negative order. The applicant had, before filing this application, filed a notice of appeal, which he has also sought leave to withdraw through the notice dated 25/6/2025.
18. Stay pending appeal is governed under Order 42 Rule 6 of the Civil Procedure Rules. It is granted at the discretion of the court on sufficient cause being established by an applicant. An applicant must show that he will suffer substantial loss unless the order is made; the application has been made without unreasonable delay, and such security as the court orders for the due performance of the decree or order, as may ultimately be binding on the applicant, has to be offered. See *Butt v Rent Restriction Tribunal* [1979] KECA 22 (KLR),
19. The 1st respondent has opposed the motion, stating that the judgment was a negative order incapable of being stayed or enforced by the court. In the impugned judgment, the court simply dismissed the applicant's suit as well as the counterclaims by the defendants. As rightly put by the 1st respondent, what exists is a negative order, which is incapable of being stayed by this court. See *western college of sciences versus*.
20. The doctrine of finality holds that once a court determines a matter on merits, it becomes functus officio. It cannot revisit issues already determined. See *Raila Odinga & 2 Others v Independent Electoral & Boundaries Commission & 3 others* [2013] eKLR.
21. The applicant has termed the judgment as procured through fraud and misrepresentation at the instance of the 1st respondent. The court notes that the applicant has already opted to file a notice of appeal against the judgment to the Court of Appeal. Once he has exercised that option, the applicant may not return to this court and ask it to set aside a regular judgment on the merits rendered after the applicant fully participated in the hearing, tendered evidence, and looked at the rival pleadings from his opponents. The court lacks jurisdiction under the *Appellate Jurisdiction Act* and the Rules made thereunder to entertain an application, let alone grant leave to withdraw a notice of appeal to the Court of Appeal.



22. On the issue of compensation and or issuance of an alternative land, these issues were determined by the court in the judgment dated 11/6/2025. The applicant is not sure whether he wants to appeal or set aside the said judgment. He is forum shopping for favorable court orders, and his actions, ex debito justitiae, are prejudicial to the respondents.

23. The upshot is that I find the application lacking merits. It is dismissed with costs.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 8TH DAY OF OCTOBER 2025.

In the presence of:

Court Assistant - Dennis

Applicant present

Respondent absent

HON. C.K. NZILI

JUDGE, ELC KITALE.

