



Elangata Wuas Group Ranch (Suing through it Registered Group Ranch Officials) v County Government of Kajiado & 2 others (Environment and Land Case 443A of 2017) [2025] KEELC 6978 (KLR) (9 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6978 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE 443A OF 2017
MD MWANGI, J
OCTOBER 9, 2025**

BETWEEN

**ELANGATA WUAS GROUP RANCH APPLICANT
SUING THROUGH IT REGISTERED GROUP RANCH OFFICIALS**

AND

COUNTY GOVERNMENT OF KAJIADO RESPONDENT

AND

**COUNTY OF KAJIADO LAND SURVEYOR 1ST DEFENDANT
LAND REGISTRAR, KAJIADO 2ND DEFENDANT**

RULING

(In respect of the Notice of Motion application dated 20th August 2024 seeking a review of the judgement of this court delivered on 13th May 2024 under the provisions of Order 45 of the Civil Procedure rules)

Introduction

1. Before this Court for determination is the Notice of Motion dated the 20th day of August 2024 brought by the 1st Defendant/Applicant, the County Government of Kajiado, under the provisions of Order 40 Rule 1, Order 45 Rule 1(a), and Order 51 Rule 1 of the Civil Procedure Rules, 2010. The Applicant seeks, inter alia, orders that this Court be pleased to review its judgment delivered on 13th May 2024 in favour of the Plaintiff/Respondent, Elangata Wuas Group Ranch (suing through its registered officials), together with any consequential decree and orders arising therefrom. The Applicant further prays for a temporary injunction restraining the Plaintiff/Respondent from subdividing or allocating portions of land known as Kajiado/Elangata-Wuas Plot Nos. 390, 774 to



- 794, which are said to have been demarcated and reserved as public utility plots pending the hearing and determination of this application.
2. The application is premised on the grounds set out on its face and supported by the Affidavit of HAMILTON PARSEINA, the County Executive Committee Member in charge of Lands, Housing, Physical Planning, and Urban Development in the County Government of Kajiado, sworn on the 20th day of August 2024. The Applicant contends that following the judgment of this Court delivered on 13th May 2024, the Plaintiff/Respondent has commenced subdivision and sale of land reserved for public utilities, and that such acts constitute the discovery of new and important matter(s) warranting review. It is further argued that the said judgment has the effect of ousting the constitutional and statutory functions of the County Government under Article 186 of *the Constitution* and Sections 56(a) and 59(1) of the *Physical and Land Use Planning Act*, Cap 286, by limiting its power to control and approve development applications within the county.
 3. The application is opposed through a Replying Affidavit sworn on the 23rd of August 2024 by JOEL KANCHORI OLE SINGEEN, the Group Ranch Chairman of the Plaintiff/Respondent, Elangata-Wuas Group Ranch. The deponent describes the Applicant's motion as misconceived, unmerited, and an abuse of the court process, urging that it be dismissed with costs.
 4. The Plaintiff/Respondent raises several procedural and jurisdictional objections, contending that the instant motion amounts to a second review application after the Applicant had earlier filed and subsequently withdrawn a similar one dated 25th July 2024 without disclosure to the Court. It is also asserted that the present motion, filed ninety-nine (99) days after delivery of judgment, is time-barred and a disguised appeal against the court's decree, the proper recourse for alleged errors of law being an appeal and not a review.
 5. The Respondent further argues that the motion fails to satisfy the threshold for review under Order 45 Rule 1 of the Civil Procedure Rules, in that no discovery of new or important matter has been demonstrated, nor has the Applicant shown that any such evidence was unavailable at the time of trial despite due diligence.
 6. In opposing the prayer for temporary injunction, the Plaintiff/Respondent avers that the Applicant lacks locus standi over the suit properties, which are registered in the name of the Plaintiff under freehold tenure, and that the Applicant has no substantive suit pending before this Court to anchor the interim relief sought. It is further deposed that the prayers sought offend the principle of finality of litigation and contravene statutory timelines governing ex parte injunctions.
 7. The Respondent also accuses the Applicant of non-disclosure of material facts, asserting that officers of the County Government participated in the approval process of the subdivisions after the judgment, and that the properties in question—Kajiado/Elangata-Wuas Nos. 390, 774 to 794—had already been subdivided and new titles issued as early as 2013. The Respondent maintains that the character of the land has since changed, with necessary planning consents and mutations duly processed, thereby rendering the application overtaken by events.
 8. The Plaintiff/Respondent prays that the interim orders issued on 23rd August 2024 be set aside and the Applicant's Notice of Motion dated 20th August 2024 be dismissed with costs, arguing that the same is frivolous, vexatious, and an abuse of the due process of the Court.



Directions

9. The court directed that the parties file written submissions; the parties were also afforded an opportunity to highlight them orally. The submissions have been considered in the writing of this ruling.

Analysis and Determination

10. Having carefully considered the application, the affidavits, the submissions of the parties, and the applicable law, the Court finds that the singular issue that falls for determination is whether the 1st Defendant/Applicant has satisfied the legal threshold for review of this Court's judgment delivered on 13th May 2024.
11. I already noted earlier on that the prayer for temporary injunction was sought pending the hearing and determination of this application.
12. The law governing review of decrees or orders of the Court is provided for under Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules, 2010, which provides that:

“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.”
13. The parameters under the above provision have been judicially settled. In *National Bank of Kenya Limited v Ndungu Njau* [1997] eKLR, the Court of Appeal observed that:

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the face of the record. The error or omission must be self-evident and should not require an elaborate argument to be established.”
14. Similarly, in *Francis Origo & Another v Jacob Kumali Mungala* [2005] eKLR, the Court observed that:

“An application for review must be clear and specific on the discovery of new and important evidence, mistake or error apparent on the face of the record, or any other sufficient reason. A review cannot be an appeal in disguise.”
15. The 1st Defendant/Applicant contends that the impugned judgment contains an error apparent on the face of the record in that it failed to acknowledge and uphold the constitutional and statutory mandate of the County Government of Kajiado in matters of county planning, development control, and management of public land.
16. Indeed, Article 186 of the Constitution, read together with Part 2, paragraph 8 of the Fourth Schedule, unequivocally vests in the County Governments the function of county planning and development,



including land survey and mapping, boundaries and fencing, and housing. The same is buttressed by Section 104(1) of the *County Governments Act*, No. 17 of 2012, which provides that:

“A county government shall plan for the county and no public funds shall be appropriated outside a planning framework developed by the county executive committee and approved by the county assembly.”

17. Additionally, Sections 56(a) and 59(1) of the *Physical and Land Use Planning Act*, 2019 confer upon the County Government the power to control and approve all development applications and to ensure the proper execution of physical development plans.
18. This Court in determining the question whether the Applicant has established a ground for review is guided by the principle enunciated in *Muyodi v Industrial and Commercial Development Corporation & Another* [2006] 1 EA 243, where the Court of Appeal held that:

“An error apparent on the face of the record cannot be defined precisely or exhaustively; it must be an error which strikes one on merely looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions.”
19. The Court allowed the Plaintiff’s case in terms of the 1st prayer in the Plaintiff thereby declaring that ‘the registered group ranch officials or committee of Elangata Wuas Group Ranch are the only persons that have the mandate, are under a duty and responsible to hold an such assets and or properties of the said group ranch and to exercise their powers as such for preparing a plan for the development of the group ranch common areas,.....and to implement such plan in consultation with the Land Adjudication officer and the 1st Defendant’s Planner on behalf of and for the collective benefit of all members of the group ranch.’
20. I need to add that land reserved for public utilities would automatically become public land and is under the provisions of Article 62 of *the Constitution* vested in the County Government and is to be held in trust for the people resident of the County, and is to be administered on their behalf by the National Land Commission.
21. From the face of the judgment, it is evident that the above constitutional and statutory provisions were not considered or given effect in determining the County Government’s role. That omission, in my considered view, constitutes an error apparent on the face of the record—being a manifest oversight of express constitutional and statutory provisions central to the determination of the dispute
22. The omission to consider the County government’s constitutionally entrenched planning mandate as well as the mandate to hold public land in trust is such a self-evident error that strikes at the very foundation of the decision.
23. In light of the foregoing, the Court finds that the application satisfies the threshold for review as set out in Order 45 Rule 1 of the Civil Procedure Rules. The error on record is manifest and apparent; the application has been made without unreasonable delay; and the interests of justice require that the judgment be revisited. There is no specific timelines under the law for filing an application for review as insinuated by the Respondent. Again, a withdrawal of an earlier application does not disentitle the Applicant from filing another application.



24. In appropriate circumstances, a review may result not only in correction of the record but also in the setting aside of the judgment and an order for the rehearing of the matter. Order 45 rule 5 provides that:

“When an application for review is granted, a note thereof shall be made in the register, and the court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.”

Order 45 Rule 5, essentially empowers the Court, upon review, to make such orders as it deems just— including setting aside a judgment and directing that the case be heard de novo.

25. In view of the above analysis, this Court is satisfied that the 1st Defendant/Applicant has demonstrated the existence of an error apparent on the face of the record, arising from the failure to appreciate and acknowledge the County Government’s constitutional and statutory mandate as the central planning authority within its area of jurisdiction and the custodian of public land.

26. Accordingly, and pursuant to Order 45 Rule 1 of the Civil Procedure Rules, the Court makes the following orders:

- a. The Notice of Motion dated 20th August 2024 is allowed.
- b. The Judgment of this Court delivered on 13th May 2024, together with all consequential orders and decree, is hereby set aside.
- c. The matter shall be heard afresh de novo.
- d. The court makes no orders as to Costs.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 9TH DAY OF OCTOBER 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Kamau for the Plaintiff Respondent

N/A by the Defendants

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

