



Mugweru & 2 others (Being the Administratrices of the Estate of Maaka M. Mugweru - Deceased) v National Land Commission & 5 others (Environment and Land Petition E041 & E042 of 2022 (Consolidated)) [2025] KEELC 6819 (KLR) (9 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6819 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT AND LAND PETITION E041 & E042 OF 2022 (CONSOLIDATED)

AA OMOLLO, J

OCTOBER 9, 2025

IN THE MATTER OF THE COMPLAINT LODGED BY LOISE WANJIRU GICHUHI AND GODWIN WACHIRA GICHUHI (THE ADMINISTRATORS OF THE ESTATE OF GICHUHI KIMIRA (DECEASED)) TO THE NATIONAL LAND COMMISSION FOR REVIEW OF GRANT I.R. NO. 24746, L.R NO. 13041

AND

IN THE MATTER OF THE DECISION AND/OR DETERMINATION BY THE NATIONAL LAND COMMISSION REVOKING THE TITLES TO WIT L.R NO. 13041/1-3 MADE ON 8TH MARCH, 2018

AND

IN THE MATTER OF THE SPECIAL ISSUE GAZETTE NOTICE VOL.CXXNO. 138 DATED 9TH NOVEMBER, 2018 PUBLISHING THE DECISION OF THE NATIONAL COMMISSION PURPORTEDLY MADE ON 28TH APRIL, 2017

AND

IN THE MATTER OF ARTICLES 2(4), 10, 19, 22, 23, 25, 27, 40, 47, 50, 64, 67, 73, 165 OF THE CONSTITUTION AND SECTIONS 5 AND 14 OF THE NATIONAL LAND COMMISSION ACT

AND

IN THE MATTER OF VIOLATION OF CONSTITUTIONAL RIGHTS OF LOISE WAIRIMU MUGWERU, RUTH WANJIRU MUGWERU AND WINNIE WANGU MUGWERU (BEING THE ADMINISTRATRICES OF THE ESTATE OF MAAKA MUKUHI MUGWERU (DECEASED)) BY THE NATIONAL LAND COMMISSION

BETWEEN

LOISE WAIRIMU MUGWERU 1ST PETITIONER

RUTH WANJIRU MUGWERU 2ND PETITIONER



WINNIE WANGU MUGWERU 3RD PETITIONER
BEING THE ADMINISTRATRICES OF THE ESTATE OF MAAKA M.
MUGWERU - DECEASED

AND

NATIONAL LAND COMMISSION 1ST RESPONDENT
THE CHIEF LAND REGISTRAR 2ND RESPONDENT
LOISE WANJIRU GICHUHI 3RD RESPONDENT
GODWIN WACHIRA GICHUHI (SUED AS THE ADMINISTRATORS OF THE
ESTATE OF GICHUHI KIMIRA - DECEASED) 4TH RESPONDENT
DIRECTOR OF SURVEY 5TH RESPONDENT
THE HON. ATTORNEY GENERAL 6TH RESPONDENT

RULING

1. The Petitioners are the applicants in the motion dated 20th December, 2024, which is brought under the provisions of section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules, amongst other relevant laws. They are seeking for the following orders:
 - a. That upon hearing inter-partes, the Ruling and all consequential orders issued by this Honourable Court on 20th June, 2024 be reviewed, vacated, and/or set aside.
 - b. That costs of this motion be provided for.
2. The application was premised on the affidavit of Loise Wairimu Mugweru sworn on 20th December 2024 and the grounds listed on its face. Amongst the grounds listed are;
 - i. That the said order is superfluous and incapable of being executed owing to the fact that the suit titles to wit L.R. Nos 24746; 13041/1-3 (original 13041) more specifically LR. No. 13041/2, has always been in the name of the late Maaka Mukuhi Mugweru, whose Estate is represented by the Petitioners/ Applicants herein.
 - ii. That the Respondents have never been registered as owners or been in possession of the suit property and therefore do not stand to suffer any loss and/or damage. No prejudice will therefore be suffered by the Respondents if the sought orders for review are granted as prayed. To the contrary, the Petitioners/ Applicants stand to suffer irreparably should the Ruling be executed which will infringe upon their fundamental constitutional rights to own property.
 - iii. That it is evident from the proceedings and the Judgement of this Court that the Petitioners/ Applicants have always been the bonafide registered owners of the suit titles and have always held a good and untarnished title to the suit property.
3. Ms Loise deposed that this Honourable Court erred in delivering the said Ruling owing to the fact that at all material times the 2nd and 3rd Petitioner and I have been in possession and occupation of the parcel of land to wit L.R No. 13041/2 since 1977.



4. That further and at all material times, the suit titles to wit L.R. Nos 24746; 13041/1-3 (original 13041), more specifically LR. No. 13041/2 has always been in the name of the late Maaka Mukuhi Mugweru whose Estate I represent alongside the 2nd and 3rd Petitioners/ Applicants as shown in the copy of title annexed.
5. That it, therefore, came as a shock when the Ruling was delivered in staying the rectification of the suit titles when the suit titles were already registered under the late Maaka Mukuhi Mugweru whose Estate is represented by the Petitioners/ Applicants herein.
6. That further and above, the order granted in the Ruling of 20th June, 2024 was not specifically prayed for by the Respondents in the Motion dated 21st October, 2023.
7. That further and above, this Honourable Court erroneously issued the sad order while it was not specifically prayed for in the Respondents' Motion dated 21st October, 2023.
8. That based on the above material, she sought and obtained legal advice from their Advocates on record:
 - a. That they should prefer a review of the Ruling of 20th June, 2024.
 - b. That the Order emanating from the Ruling is superfluous and incapable of being executed, thus creating more confusion.
 - c. That the Respondents have registered the Order emanating from the Ruling at the Lands registry thus creating an inhibition on the title and preventing the Petitioners/ Applicants from enjoying their fruits of litigation. (Annexed hereto and marked "LWM-5" is a copy of the entry of the order in the Grant in LWM-4 above attesting to the same).
 - d. That there was no prayer in the Motion of 21st October, 2023 seeking the stay of the rectification of the suit titles to wit L.R. Nos 24746; 13041/1-3 (original 13041), to that effect is an error apparent on the face of the record.
9. She avers that from the foregoing facts, there is an error apparent on the face of the record and there are therefore, sufficient and justifiable reasons for this Court to review and set aside and/or vacate the Ruling of 20th June, 2024. She urged the court to grant the order sought in their application.
10. The application is opposed by the replying affidavit of Godwin Wachira, the 4th Respondent sworn on 20th January 2025 on his behalf and on behalf of the 3rd Respondent. He deposed inter alia, that the judgment delivered, by this Honourable court, on 28.9.2023, issued an Order of Certiorari quashing the decision or Award of the National Land Commission, revoking the sub-division of the property title LR No. 13041 and the directions thereof, given to revert the said parcel of land to the Estate of Gichuhi Kimira
11. That the 4th Respondent being aggrieved by the judgment filed an appeal against the decision and applied for an order of stay of execution of the judgment or decree thereof, pending the hearing and determination of the Appeal. That this Honourable court after considering the application thoroughly, found the 4th Respondent application was merited, allowed it.
12. That when the court made a Ruling staying its decisions, it was informed, the title to parcel LR No. 13041/2 was registered in the name of the estate of Maaka Mukuhi Mugweru, as the 4th Respondent had annexed a copy of the Certificate of Official Search, marked GWG4 at paragraph 8 in the Supporting affidavit to my application dated 21.10.2023, which fact was admitted by the 1st Petitioner. In the main petition, the Petitioners had also displayed a copy of the said Grant.



13. That by granting an order for stay of execution of the decree, it was in essence maintaining the effect of the award of the National Land Commission, pending the hearing and determination of the appeal, which by itself inhibited the Petitioners from dealing with the said title. The 4th Respondent has applied for registration or noting of the said order, against the title, which has already been effected. The Ruling in the matter was delivered on 20.6. 2024, and the application was filed six months after, to say the least, was brought after an inordinate delay and is an afterthought.
14. That their advocate has advised them that the Petitioners are challenging the stay of execution order, through the back door; otherwise, if aggrieved, they should have appealed against the decision. That there is no error apparent on the face of the record, either of facts or law, by virtue of the Honourable court finding that, the 4th Respondent's application was merited on the issues raised.
15. The 4th Respondent also filed grounds of opposition dated 15th February 2025, which stated that there was no error apparent on the face of the record to warrant the review of the ruling rendered on 20th June 2024.
16. The Petitioner filed skeleton submissions dated 10th June 2025 reiterating the facts pleaded in support of the motion. They submit that it is clear beyond peradventure that there is an error apparent on the face of the record when this Honourable Court arrived at the Ruling of 20th June, 2024 where it stayed the rectification of the titles to the suit property, more specifically LR. No. 13041/2, which was already registered under the late Maaka Mukuhi Mugweru whose Estate is represented by the Petitioners/Applicants.
17. They also submit that the present motion meets the legal threshold for review since there is a mistake or error apparent on the face of the record as espoused in the Supporting Affidavit of Loise Wairimu Mugweru. That the suit property was at all times during the suit registered under the name of Maaka Mukuhi Mugweru, whose Estate is represented by the 1st to 3rd Petitioners/Applicants.
18. The Ruling of the Court, which stayed the rectification of the titles to the suit property, more specifically, LR. No. 13041/2, was therefore erroneous on the face of the record since it seemed to stay an action which had already taken place. The specific order had already been overtaken by events, way before the 3rd and 4th Respondents moved the Court for orders of stay. It therefore suffices that the order is incapable of being executed and the inhibition currently registered on the title should be lifted by the review of this Ruling.
19. It is evident that the 3rd and 4th Respondents did not pray for the specific order in their motion of 21st October, 2023. Therefore, the order staying the rectification of the titles to the suit property is a mistake and error apparent on the face of the record. They cited the case of National Bank of Kenya Limited vs. Ndungu Njau [1997] eKLR which held that;

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the Court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.”



Analysis and Determination:

20. I have considered the grounds upon which the application is premised and the grounds adduced in opposition thereto. I am called to consider whether or not there is error or mistake apparent on the face of the record for which the orders of stay ought to be set aside.
21. In arguing that the court was in error, the Applicants point out the fact that the order of 20th June 2024 affect title no 13041/2 which title was already in the name of the deceased Maaka Mukuhi Mugweru and therefore stay of execution ought not to apply to it.
22. The order of stay is granted under the provisions of order 42 to stay a judgment or decree pending the happening of an event. In this instance, what was sought to be stayed was the decree issued pursuant to the judgement of this court pending determination of the appeal by the 3rd and 4th Respondents.
23. It is important to look at the reliefs sought vis a vi the decree issued in order to ascertain whether there was an error in the ruling of this court rendered on 20th June, 2024. Some of the reliefs in petition E041 of 2022 read thus;
 - a. It declared that entries No.6 to 15 in the parallel title to Grant I.R No.24746, (L.R No.13041) deposited in the Land Registry were made fraudulently and are therefore illegal.
 - b. The sub-division arising from these fraudulent transactions are hereby cancelled and the ownership reverted to the Estate of the late Gichuhi Kimira.
 - c. The Records of this sub-division in the correspondence file for grant IR No.24746, LR No.13041 should be removed.
24. The decree extracted read in part thus:

“That there be and is hereby granted an order staying the rectification of the register of the suit titles L.R. No. 24746, 13041/1-3 (original 13041) to reflect the names of the Petitioners/ Respondents pending the hearing and determination of the Applicant’s appeal before the Court of Appeal.”
25. Throughout the pleadings by the Petitioners/Applicants, the suit properties were described as the resulting subdivision numbers L.R. Nos 13041/1-3. They had urged this court to find that the 1st Respondent had no powers to hear, entertain and or any claim relating to the subject property L.R. numbers 13041/1-3 and proceed to quash any such determination.
26. In petition E042 of 2022, the Petitioner sought under paragraph 1 of the reliefs thus;

“A declaration that the 1st Respondents determination conveyed vide gazette No. 11714 of 9th November 2018 concerning parcel number 13041 or any parcel of land derived from it upon subdivision was made without jurisdiction was unconstitutional, invalid, null and void.”
27. The two petitions were consolidated and heard together. A reading of the pleadings and the prayers sought in petition E041 of 2022 reveals that the Applicants did not include L.R. No. 13041/2 in the reliefs. The orders sought were to apply to all three (3) subdivisions.
28. Similarly, in petition E042 of 2022, which spoke to subdivision number 13041/2, the Applicants were asking the court to issue an order suspending the implementation of directions given by the 1st Respondent, an order to nullify a gazette notice concerning the mother title 13041 and an order to rectify the title to restore the Petitioner’s name.



29. There is no dispute that the 3rd and 4th Respondents have filed an appeal. Whether or not that appeal has merit, the 3rd and 4th Respondents are entitled by law once a determination was made in their application to have the stay orders in place until the appeal is determined. The Applicants are alluding that the order granted in the stay was not prayed for, and in particular as relating to L.R. 13041/2.
30. Having set the background above, I hold that the argument on error/mistake is misplaced for two reasons. First, the two petitions having been consolidated, the decree issued was one, and this decree referred to the subject matter of the dispute as L.R. No 13041/1-3.
31. Second, if it is assumed that the Petitioner in E042 of 2022 should proceed to execute because the said parcel of land was in the name of the deceased, whom they are administering his estate for, this court can only be considered to have made a mistake in granting the stay order if the suit property was not part of the dispute. However, their petition had been filed to challenge orders given by the 1st Respondent in favour of the 3rd and 4th Respondents. They also prayed for the rectification of the suit title to restore their names.
32. If the Applicants were unhappy with the orders of stay as granted, they ought to appeal against the said order. The current application, though couched as a review application, is actually aimed at asking the court to reconsider the merits of the application for stay of execution which had already been determined.
33. In light of the foregoing analysis, I find no error or mistake in my ruling delivered on 20th June 2024. I also do not see any sufficient cause to warrant setting aside or vacating the orders of stay of execution pending appeal, as granted on 20th June 2024. Consequently, the current application is devoid of merit, and I proceed to dismiss it with costs to the 3rd and 4th Respondents.

DATED, SIGNED, AND DELIVERED AT NAIROBI ON THE 9TH DAY OF OCTOBER 2025.

A. OMOLLO

JUDGE

