



REPUBLIC OF KENYA



**Wafula v Walela & 6 others (Environment and Land Case  
106 of 2010) [2025] KEELC 6759 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6759 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
ENVIRONMENT AND LAND CASE 106 OF 2010  
EC CHERONO, J  
OCTOBER 2, 2025**

**BETWEEN**

**BENJAMIN BARASA WAFULA ..... PETITIONER**

**AND**

**ALEX MWANGALA WALELA ..... 1<sup>ST</sup> RESPONDENT**

**JOSEPH MAKHAKHA ELAM ..... 2<sup>ND</sup> RESPONDENT**

**WYCLIFFE WANYONYI ELAM ..... 3<sup>RD</sup> RESPONDENT**

**JOEL KHAEMBA WATIBINI ..... 4<sup>TH</sup> RESPONDENT**

**DICKSON JUMA WALELA ..... 5<sup>TH</sup> RESPONDENT**

**JANE NAFULA WALUBENGO ..... 6<sup>TH</sup> RESPONDENT**

**HARRIET NABWILE WAWIRE ..... 7<sup>TH</sup> RESPONDENT**

**RULING**

1. What is before me for determination is the Plaintiff/Applicant's Notice of Motion brought under certificate of urgency dated 19<sup>th</sup> May 2025 seeking the following orders;
  1. (Spent)
  2. That, it pleases this Hon. Court to review the judgment delivered on this 8<sup>th</sup> day of May, 2025
2. The application is premised on numerous grounds apparent on the face thereof. The application is grounded on evidence and not general terms as required under the rules of procedure but the Applicant is also supported by the Applicants affidavit sworn on even date. The grounds on the face of the said application are matters of evidence which ordinarily require to be made by affidavit. The application is further supported with an affidavit by the Plaintiff/Applicant sworn on even date.



3. When the said application was placed before me as the duty Judge, I directed that the same be canvassed by affidavit evidence and written submissions.

### **Plaintiff/Applicants Summary of Facts**

4. From his ten paragraphs supporting affidavit, the Plaintiff/Applicant deposed as follows;
  1. That I know of my own knowledge, the 1<sup>st</sup>, 4<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> Defendants herein; are in possession of impounding and Returnable Documents, but the Hon. Judge has omitted compelling them through a Summons to produce Documents dated 23<sup>rd</sup> December, 2023 pursuant to Order 16; Rules 14 up to 19 of the Civil Procedure Act Cap 21; against the Defendants' Counterclaim dated 23<sup>rd</sup> February, 2021.
  2. That, I know of my own knowledge, the Trial Judge omitted to consider the Plaintiff's / Applicant's Bundle of Documents for compliance with Order 11 of the Civil Procedure Act Cap 21; against the Defendants' / Respondents' Counterclaim dated 23<sup>rd</sup> February, 2021.
  3. That I know of own knowledge, the trial judge omitted to consider the plaintiff's/Applicant's Statement of Defence dated 23<sup>rd</sup> June, 2022; against the Defendants' Counterclaim dated 23<sup>rd</sup> February, 2021; by occasioning clerical errors that, the plaintiff/Applicant never responded to the Defendants Counterclaim dated 23<sup>rd</sup> February, 2021.
  4. That I know of own knowledge, the trial judge omitted to consider the plaintiff's/Applicant's further Replying affidavit/ Further pleadings dated and 12<sup>th</sup> June, 2023; by occasioning clerical errors that, the plaintiff/Applicant never responded to the Defendants counterclaim dated 23<sup>rd</sup> February, 2021.
  5. That, I know of own knowledge, the trial judge omitted to consider the judicial service (Code of conduct and Ethics) Regulations 2020; Rule 4(d-g) and 2(a-c); where the said judge being a matrimonial to the relatives of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants/Respondents herein, should recuse from hearing this case.
  6. That, I know of own knowledge, the trial judge omitted to consider the judicial Service (Code of Conduct and Ethics) Regulations 2020; Rule 4(d-g); and 2(a-e); where the said judge has pastoral interests with Enock Wanjala Murutu (a brother) to the 6<sup>th</sup> Defendant/Respondent herein, should recuse from hearing this case.
  7. That, I know of own knowledge, the Hon. Trial judge, omitted to consider that, the 1<sup>st</sup>, 4<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants'/Respondents' plaint dated 13<sup>th</sup> April, 2011; was dismissed on 23<sup>rd</sup> May, 2017 by the High Court of similar status to this Hon. Court.
  8. That, I know of own knowledge, the Hon. Trial judge, omitted to consider that, the 1<sup>st</sup>, 4<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants/Respondents Civil Case NO. 132 of 2019, was dismissed on 1<sup>st</sup> of September, 2023; by the Senior Principal Magistrate's Court.
  9. That, I know of own knowledge, when the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Defendants/Respondents herein withdrew their 24<sup>th</sup> June, 1968 Land Sale Agreement, forged on 17<sup>th</sup> January, 1971 and 8<sup>th</sup> March, 1971 due to corruption and fraud; they should now settle their vendees 9<sup>th</sup> 4<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants/Respondents herein), from ancestral L.R No. Ndivisi/Khalumuli/343.
5. The 1<sup>st</sup> Respondent swore a Replying affidavit on his behalf and on behalf of the 4<sup>th</sup> 6<sup>th</sup> and 7<sup>th</sup> Respondents in opposition to the said application. The Respondents argued that one finds it difficult



to comprehend the application and the remedies sought by the Applicant. They contend that in an application for review or setting aside a judgment or order of the court under Order 45 Rule 1 of the CPR, an Applicant must demonstrate the Discovery of new and important matter or evidence which, after 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 order made or on account of some mistake or error apparent on the face of the record or for any other sufficient reason.

6. The Respondents further argued that the Applicant may apply to set aside a judgment where the same has been entered or suit dismissed under Order 12 Rule 7 for non-attendance by the party during the hearing and that the application by the Applicant does not answer to the application for review or setting aside an ex-parte judgment or orders and no reason advanced whatsoever in the entire application to justify a review or setting aside of the judgment of this court.
7. They averred that a reading through the application only constitutes invectives against the judge and other persons who cannot defend themselves.
8. They stated that the Applicant was present at the hearing of this case and had the opportunity to cross-examine witnesses and offer his rebuttal evidence but he opted not to participate.

### **Legal Analysis and Decision.**

9. I have considered the Notice of Motion application, the supporting affidavit, the Replying affidavit, submissions by the Applicant and the relevant law. The application is brought under Order 22 Rules 84 & 86, 43 Rule 1, 2 & 3, 40 Rule 7, 37 Rule 1 (g) CPR, Judicial Service (Code of Conduct and Ethics) Regulation 2020 (Rules 4 & 21) and the *Law of Succession Act*. The first prayer in the application is for an order of Review of the judgment of this Court delivered on 8<sup>th</sup> May 2025. An application for review of a judgment or order is brought under order 45 Rule 1 CPR which provides as follows;

1(1) Any person considering himself aggrieved-

a. By a decree or order from which an appeal is allowed, but 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.”

10. Though the Applicant is seeking an order for review, he has not properly invoked the court for those orders. Even assuming that this Court overlooks the ineptitude of not properly invoking the Court, the Applicant does not also address to an application for review or setting aside an ex-parte judgment or order and no reasons has been advanced in the entire application to justify a review or setting aside of the judgment of this Hon. Court delivered on 8<sup>th</sup> May, 2025. I agree with Counsel for the Respondents that the said application constitutes invectives against this Court and other persons who cannot defend themselves. The same applies to the submissions filed by the Applicant dated 25<sup>th</sup> June, 2025. The Applicant has not raised any point of law relevant to an application for review. The application in



my view is a suitable case study for students in law school. The submissions are also poorly framed, incoherent, lacking in substance and amounts to nothing.

11. The upshot of my finding is that the said Notice of Motion dated 19<sup>th</sup> May 2025 is without merit and the same is hereby dismissed with costs.

12. Orders accordingly.

**READ, DELIVERED AND SIGNED AT BUNGOMA THIS 02<sup>ND</sup> DAY OF OCTOBER, 2025.**

**HON. E.C. CHERONO**

**ELC JUDGE**

In the presence of;

Mr. Wasilwa for the Respondents.

Applicant in person-present.

Bett C/A.

