



Kivure & 7 others (Suing on Behalf of 4201 Members of Kishamba B Group Ranch) v Mwakina & 6 others; County Government of Taita Taveta & 35 others (Interested Parties) (Environment and Land Case 4 of 2024) [2025] KEELC 5802 (KLR) (Environment and Land) (31 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5802 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND CASE 4 OF 2024**

**EK WABWOTO, J
JULY 31, 2025**

BETWEEN

**JOHN KIVURE & 7 OTHERS & 7 OTHERS & 7 OTHERS PLAINTIFF
SUING ON BEHALF OF 4201 MEMBERS OF KISHAMBA B GROUP RANCH**

AND

**BENSON MLAMBO MWAKINA 1ST DEFENDANT
ATTORNEY GENERAL & 5 OTHERS & 5 OTHERS & 5
OTHERS 2ND DEFENDANT**

AND

**COUNTY GOVERNMENT OF TAITA TAVETA INTERESTED PARTY
D KIMBIO & 34 OTHERS & 34 OTHERS & 34 OTHERS . INTERESTED PARTY**

RULING

1. This is a ruling in respect to the application by Anthony Kishaga Mwasi dated 22nd July 2025 seeking to arrest the judgment of the court and orders for review and setting aside of orders issued on 17th June 2025.
2. The application was premised on the main grounds that the Applicant is a Secretary of Kishamba B Group Ranch and having been sued as herein he was not heard by this court and his case was closed without being granted an opportunity to be heard and further that the court ought to review its orders issued on 17th June 2025 and grant him an opportunity to be heard.



3. The application was opposed by the Plaintiff and the 1st Defendant. The plaintiff filed a Replying Affidavit sworn by Robert Kinyanjui on 29th July 2025. The 1st Defendant filed a Replying Affidavit sworn by Benson Mwakina on 30th July 2025. However, during the hearing of the application, it emerged that the said application had not been served upon the applicant and hence the same could not be considered by the court in respect to the application dated 22nd July 2025.
4. During the plenary hearing of the application, Anthony Kishaga Mwasi the applicant herein, submitted on his own behalf, while Learned Counsel Mr. Litoro made submissions on behalf of the Plaintiff and Learned Counsel Mr. Olendi submitted on behalf of the 1st Defendant
5. This court has considered the application, rival affidavits filed and the oral submissions made by the Applicant and Counsel for the Plaintiff and 1st Defendant and the issue for determination is whether the said application is merited to warrant the grant of the orders sought.
6. The Court is guided by Section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules, which lay out review in circumstances where there is 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.
7. With regards to determining the merits of the Notice of Motion application, this Court must exercise its discretion to ensure the principles of fairness and right to fair hearing to all is a reality for all parties. Discretion is well discussed in *Patriotic Guards Ltd v. James Kipchirchir Sambu* [2018] eKLR.
8. To start with, there is no gainsaying that any party, the Applicant not excepted, who is desirous to partake of and benefit from the equitable discretion of the court must be truthful, honest and candid. For good measure, such an Applicant must not indulge in deceit, dishonesty and intentional misrepresentation of facts.
9. Secondly, it is also important to underscore that an Applicant desirous to invoke and benefit from equity must also be prepared to do equity. At any rate, equity frowns upon a person who approaches equity albeit with unclean hands.
10. Thirdly, where the discretion of the court is being sought, it is incumbent upon the Applicant to lay before the court all the facts including those facts that may be adverse and hostile to the interest of the Applicant.
11. The Applicant have also submitted that the orders of the court denied him his constitutional right to fair hearing. On this issue, the import and tenor of the right to fair hearing; fair trial; due process of the law and natural justice envisage that every party, the Applicant not excepted, shall be afforded reasonable notice and reasonable opportunity to attend and participate in the hearing of own case. Once a court of law is satisfied that a party has been afforded due notice and reasonable opportunity to be heard but same party fails to appropriate the right to be heard, then the court is at liberty to make such decisions as may be just, mete and expedient.
12. To my mind, a party who has been afforded the latitude and altitude to partake of the right to fair hearing, but spurned the opportunity to appropriate the right cannot be heard to contend that same has been denied the right to fair hearing. To my mind, such a contention would not only be illogical but contrary to the clear tenets of the rule of law.
13. In the instant application, the court has perused the record of the proceedings herein and it is evident that issues raised by the Applicant in his application dated 22nd July 2025 were the same issues that



were considered by the court in the ruling delivered on 17th June 2025. The Applicant has been unable to demonstrate the discovery of new and important matter or evidence which was not within his knowledge or which could not be produced at the time of the trial. The applicant has not met the threshold for grant of the orders sought and for that reason alone, this application must be dismissed.

14. In the foregoing, this Court hereby issues the following orders:
- i. The application dated 22nd July 2025 lacks merit and the same is hereby dismissed.
 - ii. The Applicant, Anthony Kishagha Mwasi is hereby granted 14 days to file and serve his written submissions in respect to the main suit herein.
 - iii. Judgment shall be delivered in open court/virtually on 25th September 2025.
 - iv. Each party shall bear own costs of this application.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 31ST JULY 2025.

E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Litoro for the Plaintiffs.

Mr. Olendi for the 1st Defendants.

Mr. Anthony Kishagha Mwasi the Applicant.

Mr. Kariuki Mburu for the Interested Parties.

N/A for the other parties.

Court Assistant; Mary Ngoira.

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