



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Abdalla v Kadenge & 3 others (Environment and Land Case  
203 of 2014) [2025] KEELC 7560 (KLR) (29 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7560 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT AND LAND CASE 203 OF 2014  
FM NJOROGE, J  
OCTOBER 29, 2025**

**BETWEEN**

**SAADE AHMED ABDALLA ..... PLAINTIFF**

**AND**

**SAFARI KADENGE ..... 1<sup>ST</sup> DEFENDANT**

**MNYAZI JEFWA ..... 2<sup>ND</sup> DEFENDANT**

**KADZO KARISA LESO ..... 3<sup>RD</sup> DEFENDANT**

**MIRIAM KITSAO ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. Judgment and decree in the instant suit issued on 11/3/2021 by which the Plaintiff's suit was dismissed and the counterclaim dated 3/12/2014 allowed as follows:
  - a. A declaration be and is hereby issued that they have each acquired adverse possession of their respective 2 acres portions of land within parcel of land situated at Takaungu Kilifi County in the Republic of Kenya known ad Plot No. S.R No. 2195 registered Mombasa Land Registry in Volume LT. 34, Folio 97 A/3 File 3015.
  - b. An order be and is hereby issued for the subdivision of their respective 2-acre portions of land within the said parcel of land situated at Takaungu Kilifi County in the Republic of Kenya known ad Plot No. S.R No. 2195 registered Mombasa Land Registry in Volume LT. 34, Folio 97 A/3 File 3015 and an order be and is hereby issued to the Land Registrar to register each of the Defendants as owners of their respective subdivision portions of land.
  - c. The defendants shall have the costs of the counterclaim.



2. The Plaintiff has now filed a Notice of Motion application dated 4/7/2025 seeking the following orders: -
  1. Spent;
  2. Spent;
  3. Spent;
  4. That this honourable court may be pleased to vary, set aside and/or review the judgment and/or decree of this honourable court issued on 11/3/2021;
  5. That this honourable court may be pleased to order the County Surveyor, Kilifi County to do a topcadestral survey of Plot SR No. 2195 Takaungu and file a report within 30 days of issuance of this order;
  6. That this honourable court may be pleased to issue an order declaring the Plaintiff has acquired interest in Plot SR No. 2195 Takaungu only to the extent of their occupation;
  7. That this honourable court may be pleased to issue any other order it may deem fit to grant;
  8. That costs of this application be provided for.
3. The application is supported by the affidavit sworn on 4/7/2025 by the Plaintiff, and it amplifies the grounds set out in the Notice of Motion. Briefly, the Plaintiff states that the Defendants have denied him access to the property Plot SR No. 2195 Takaungu (hereinafter also referred to as "the suit property"), hence, he is unable to conduct a survey and subdivision in compliance with the decree.
4. The Defendants opposed the application. They filed a replying affidavit jointly sworn on 30/7/2025. They deponed that the prayers sought therein had been overtaken by events as the subdivision of the suit property had already been carried out in compliance with the Judgment of this Court delivered on 23/1/2020, which decreed to each of them a portion of land measuring 2 acres out of Plot No. SR. 2195. The Defendants explained that when they sought to enforce the decree through survey and subdivision, the Plaintiff objected through her then advocate. Correspondence to that effect was annexed in a bundle as Exhibit 2. The Plaintiff thereafter filed a Notice of Motion dated 18<sup>th</sup> August 2021 seeking injunctive orders to restrain the subdivision pending an intended appeal to the Court of Appeal.
5. The Defendants added that the said application was dismissed by this Court on 13/5/2022, a copy of which ruling was annexed as Exhibit 4. They averred that the Plaintiff subsequently moved to the Court of Appeal by a Notice of Motion dated 29/9/2022, seeking similar injunctive relief as well as leave to lodge an appeal out of time. A copy of that application was annexed as Exhibit 5, while the ruling of the Court of Appeal delivered on 24/4/2024 dismissing the same with costs was annexed as Exhibit 6.
6. The Defendants contended that following the dismissal of the Plaintiff's applications before both this Court and the Court of Appeal, and in the absence of any stay of execution, they re-engaged the surveyor to undertake the subdivision. They stated that the subdivision was eventually completed, and documents evidencing the process were annexed as Exhibit 7.
7. They averred that the present application merely seeks to re-litigate issues already heard and determined by this Court and the Court of Appeal and is therefore res judicata. They added that the application was brought too late in the day, does not meet the threshold for stay, review, or variation, and is an abuse of the Court process. The Defendants denied ever harassing, or preventing the Plaintiff from



accessing or occupying the remainder of Plot No. SR. 2195 that was not decreed to them and that the Plaintiff's sister actually resides on the remainder of the suit property not decreed to them.

8. The Court thereafter directed the parties to file written submissions. However, despite being accorded sufficient time, none of the parties complied with those directions, and no written submissions were filed.

### **Analysis And Determination**

9. From the pleadings and affidavits on record, the main issue that arises for determination is whether the Plaintiff has met the legal threshold for the grant of the orders sought, namely review, variation or setting aside of the Judgment and Decree of this Court delivered on 23/1/2020 and 11/3/2021 respectively.
10. The threshold for review, variation or setting aside of a judgment is anchored in Order 45 Rule 1 of the Civil Procedure Rules, which requires the applicant to show discovery of new and important evidence which, despite the exercise of due diligence, was not within their knowledge or could not be produced at the time the decree was passed, or that there is an error apparent on the face of the record, or any other sufficient reason.
11. That order provides as follows:
  1. Application for review of decree or order [Order 45, rule 1]
    1. 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.
    2. A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.”
12. In the present case, the defendants prayed for judgment against the plaintiff for a declaration that they have each acquired two acres apiece from the land known as SR 2195 Takaungu measuring approximately 14.36 ha. They also sought an order for the excision of their respective two acre parcels from the main parcel. In its judgment the court found that the plaintiff purchased the whole parcel while the defendants were still in occupation and with full knowledge of such occupation and dismissed the plaintiffs claim for trespass against them. Judgment was only entered as prayed in the counterclaim. Out of 14.36 ha (approximately 35 acres) the defendants were thus entitled to an aggregate of only 8 acres going by that pleading. Mathematical calculations point out that a large portion must have remained. The prayers in the counterclaim did not provide for the registration of the remainder in the plaintiff's name. The plaintiff was entitled to be registered as owner over the remainder.



13. Turning to the prayers in the present application, it is clear that going by what the defendants state in their replying affidavit prayer no 3 is overtaken by events. Prayer no 3 would be predicated on the finding that there is an error on the face of the record or that a new and important matter or evidence that was not within the applicant's knowledge at the time of judgment has emerged, or that there is any other sufficient reason.
14. Looking at the application and the supporting affidavit, this court finds that the Plaintiff has not demonstrated the existence of any new and important matter or evidence that was not within her knowledge at the time of judgment, nor has she identified any error apparent on the face of the record. There is equally no sufficient reason advanced to warrant the setting aside of the impugned judgment and decree. In the circumstances, I find no basis upon which to exercise discretion in favour of the Plaintiff to vary or set aside the judgment.
15. However, I have noted that the plaintiff's main grievance is that the defendants have intimidated her and barred her access to the suit property. On that basis, it becomes necessary to assess the merits of the remainder of the prayers in the application.
16. Given that the defendants were not awarded the whole of the suit land, this court finds that the defendants' acts of barring the plaintiff from access to the remainder, if proved, would amount to egregious conduct inconsistent with the justice that the defendants received from this court in their counterclaim. It is very curious that though the defendants have ostensibly taken their share of the land as ordered by the court, and have denied the allegations of obstructing access, they appear to be opposing a mere application for a survey exercise to verify the status of the remainder on the ground. This court would not have thought so had they only opposed the review orders and allowed prayers 5 and 6 of the application by consent, but by opposing the entire application, it now appears as though the defendants have something fishy that they wish to conceal.
17. Consequently, prayer no 4 in the application dated 4/7/2025 is hereby dismissed Prayer no 5 is hereby granted. Prayer no 6 is rejected as the judgment was very clear that the defendants were each entitled to a specific amount of land.
18. For clarity, and to avoid the missteps that may arise from alien jargon such as "topcadestral" which the applicant has used in the application and which in this court's search has not yielded any incidences in the all the renowned dictionaries consulted, this court orders as follows:
  - a. As the County Surveyor Kilifi county conducts his survey exercise on what was plot no SR NO 2195, he shall specify how much land each defendant now has on the ground;
  - b. He shall compare the land the defendants have with the subdivision documents for any inconsistencies with the two acre portions that each was awarded by this court in its judgment;
  - c. He shall establish the size of the remainder of land as per the survey conducted by the defendants to excise their portions;
  - d. The County Surveyor's report shall be availed to this court within 60 days hereof.
  - e. The matter shall be mentioned on 29/1/2026 for further directions of the court.
  - f. On the said mention date, the costs of the present application and of any further extension of the present dispute may be quantified and shall be awarded for or against any party by the court depending on the parties' conduct and as the court deems fit.

All the parties are thus urged to be both proactive and co-operative in order to write finis to this litigation.



**DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 29TH DAY OF OCTOBER, 2025.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI.**

