



REPUBLIC OF KENYA



**KENYA LAW**  
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**Njoroge (Administrator in the Estate of David Wango Njoroge) v Mbugua & another  
(Environment and Land Case 10 of 2023) [2025] KEELC 7267 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7267 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE 10 OF 2023**

**JG KEMEI, J**

**OCTOBER 23, 2025**

**(FORMERLY HCCC 242 OF 1981)**

**BETWEEN**

**PETER KIIRU NJOROGE (ADMINISTRATOR IN THE ESTATE OF DAVID  
WANGO NJOROGE) ..... PLAINTIFF**

**AND**

**PETER NJOGU MBUGUA ..... 1<sup>ST</sup> DEFENDANT**

**MICHAEL MBUGUA KURIA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

**(In respect of the 1st Defendant's application 30/1/2025)**

1. Before this Court for determination is the 1<sup>st</sup> Defendant's Amended Notice of Motion application dated 30/1/2025. The application is premised to be brought under the provisions of Order 45 Rule 1 (b), Sections 1A,1B, 3A & 80 of the *Civil Procedure Act* as well as Article 159 of *the Constitution*. The Applicant prays for the following orders that;
  - a. This suit be reinstated for the purposes of hearing this application only and not the entire suit.
  - b. It may please this Honourable Court and review its Orders, vacate and set aside the Consent adopted dated 17/10/1983 in civil suit Nairobi HC Civil No. 242 of 1981 (ELC10 of 2023)
  - c. An Order be and is hereby issued to the Land Registrar Kiambu to reinstate the Green Card for the suit property Lari/Kirenga/898 as issued earlier in favour of 1st Defendant/Applicant, Peter Njogu Mbugua.
  - d. Costs of this application be in the cause.



2. The application is based on the face of it and is further supported by the Affidavit of Peter Njoroge Mbugua sworn on 30/01/2025. The Applicant states that he purchased the suit property in 1979 for Kshs. 65,000/- from Elizabeth Njeri Wango, who is now deceased. Despite receiving the purchase price, she delayed transferring the land to him. This delay prompted him to initiate proceedings in the High Court, being High Court HC 452 of 1979, seeking specific performance. A consent was recorded in that matter, which the Court adopted, and a Decree was issued on 3/04/1980. Subsequently, a title deed was processed and issued in his favour on 17/6/1990.
3. The deponent states that the Deceased, David Njoroge Wango, initiated this suit challenging the issuance of the title deed to him, claiming that the suit property is part of the Estate of Elizabeth Njeri Wango. He asserts that just before the hearing, his counsel fell ill and passed away before the case was decided. He contends that the Plaintiff's Advocate exploited this situation and filed a one-sided consent dated 17/10/1983, which was adopted, resulting in the cancellation of his title deed. He further argues that if the Plaintiff/Respondent had disclosed to the Court the existence of a Court Decree issued on 3/4/1980 in his favour in HC Civil 452 of 1979, the Court would not have recorded the impugned consent.
4. The deponent affirms that the Plaintiff/Respondent is in possession of the suit property and intends to sell it, hence the necessity to restrain him. In light of the new evidence, namely the Decree in 452 of 1979, he requests that the Court review the adoption Order dated 17/10/1983 and vacate it to allow justice to prevail.
5. Despite serving the application on the Plaintiff/Respondent, he did not respond to it. The application is therefore unopposed.
6. The Court, however, directed the Applicant to file submissions. The Applicant complied and filed the submissions dated 21/04/2025.

### **The Applicant's submissions**

7. The main issue for determination, according to the Applicant, is whether he has the right to recall and disown the consent that the Court adopted. The Applicant asserts that he has the constitutional right to fully participate in and defend his position on any suit filed against him. He contends that the impugned consent resulted in the closure of the suit without providing him with an opportunity to be heard. He claims that the consent was intended to deny him the right of reply and ownership of the suit property, which he alleges to have purchased. He accuses the Plaintiff of using underhand tactics to deceive the court and unjustly win the case. The Applicant maintains that his constitutional rights under Articles 27 (1), 40 (1), and 50 of *the Constitution* have been infringed.
8. The Applicant claims that he could not have agreed to such a consent because he obtained possession of the suit property through the consent recorded in HCCC No. 452 of 1979. Since the decree in that case was not challenged, this court cannot validly issue another decree over the same property. He contends that granting the decree recorded herein would cause injustice and create chaos for the Land Registrar. Based on this, he urges that the consent recorded herein be nullified, removed from the court's records, and its adoption be set aside.

### **Analysis and determination**

9. Having considered the application, the affidavit in support as well as the submissions thereto, I am of the view that the only issue for determination is;
  - a. Whether the setting-aside of the Consent Judgment is statute-barred.



- b. Whether the Applicant’s Notice of Motion has met the requirements for setting aside a consent judgment.
- c. Which orders should the court issue?

**Whether the setting-aside of the Consent Judgment is statute-barred.**

10. A definition of a consent judgment was succinctly captured in an old English case of *Wildung v Sanderson* [1897] 2 CL 534 where the court held that;

“A consent Judgment or order is meant to be the formal result and expression of an agreement already arrived at by the parties to the proceedings embodied in an order of the Court. The fact of its being so expressed puts the parties in a different position from the position of those who have simply entered into an ordinary agreement. It is, of course, enforceable while it stands, and a party affected by it cannot, if he concludes he is entitled to relief, simply wait until it is sought to be enforced against him, and then raise it by way of defence. The matters in respect of which he desires to be relieved. He must, when he has completed obeying it, unless and until he can get it set aside in proceedings duly constituted for this purpose.”

- 11. The purpose of the consent judgement is for the parties to inform the court that they have settled their differences in a manner suitable to themselves, without seeking the court to make any further decision. The principle is similar to the freedom to contract in contract law generally. By entering into the consent judgment, the parties exercise their free will to reach an agreement that satisfies them.
- 12. It is well established that a court cannot intervene in a consent judgment of the parties unless there are circumstances that would provide a valid reason for modifying or rescinding a contract between them.
- 13. When an applicant approaches the court with a plea to set aside a consent order, the burden of proof falls on him to prove the grounds on which he seeks to annul the consent judgment.
- 14. The Applicant, through the instant motion, has challenged the Consent Order dated 17/10/1983. A Decree was subsequently issued on 7/11/1983. The Court has been urged to set aside the consent in the interest of justice.
- 15. Section 4 of the *Limitation of Actions Act* provides that: -
  - 1. The following actions may not be brought after the end of six years from the date on which the cause of action accrued—
    - a. actions founded on contract;
    - b. actions to enforce a recognizance;
    - c. actions to enforce an award;
    - d. actions to recover a sum recoverable by virtue of a written law, other than a penalty or forfeiture or sum by way of penalty or forfeiture;
    - e. actions, including actions claiming equitable relief, for which no other period of limitation is provided by this Act or by any other written law.
  - 2. ....
  - 3. ....



4. An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.
16. The Consent Judgment was entered on 17/10/1983, and an action against it could only be brought within 12 years. Twelve years elapsed on 18/10/1995. The Applicant has not explained why he never took any action within the statutory twelve years. He remained silent all along, only to wake up after 42 years seeking to challenge the impugned Judgment.
17. The limitation period for executing a court decree under exceptional circumstances where limitation may be waived is relatively well-established, and this Court does not intend to reinvent the wheel. That said, this Court draws guidance from the pronouncement in *Koinange Investment and Development Company Limited –vs- Ian Kahi Ngethe & 3 Others (Being sued as the personal representatives of the Estate of Robert Nelson Ngethe (Deceased))* [2019] KECA59 (KLR), where it was observed that:-
- “.....While we agree that the word “action” in Section 4(4) includes all kinds of civil proceedings (including execution proceedings) as held by this Court in *M’Ikiara M’Rinkanya & Another vs Gilbert Kabeere M’Mbijiwe* (supra) we must state that the deceased was not commencing fresh execution proceedings, rather he was proceeding with an execution exercise that had already been commenced but halted by the court pending hearing and determination of an appeal.
36. In the *M’Ikiara* matter, the Court held that all post-judgment proceedings, including Originating proceedings and interlocutory proceedings for the enforcement of judgments are statute barred after 12 years.....
37. Where a party is prevented from executing a lawful decree by a court order pending the hearing and determination of an appeal against the decree, it would be unjust to hold that time still runs against the decree holder over the period when the appeal remains undetermined, and until the stay order is vacated. In *Berliner Industriebank Aktiengesellschaft v Jost* [1971] 2ALL ER 1513, the Court of Appeal held that:-
- “Where a stay is granted pending the hearing of an appeal, it is assumed that nothing can be done by the successful plaintiff to enforce the judgment until the appeal has been heard.”
38. ....” (sic)
18. In the present case, nothing prevented the Applicant from challenging the consent within the Stipulated time provided by law. He is therefore statute-barred from doing so now, 42 years later.
19. I would have stopped here, but as good practice dictates, I will proceed and determine the second issue.



## **Whether the Applicant's Notice of Motion has met the requirements for setting aside a consent judgment**

20. The circumstances under which a consent judgment may be set aside are outlined in several precedents. I will mention a few. In the case of *Brookbond Liebig (T) Ltd Vs Mallya (1975) EA 266*, the Court of Appeal for East Africa stated as follows: -

“The circumstances in which a consent judgment may be interfered with were considered by this court in *Hirani V Kassam (1952) 19 EACA 131* where the following passage from Seton on Judgements and orders, 7<sup>th</sup> Edition Vol 1, P.124 was approved:

Prima facie any order made in the presence and with the Consent of Counsel is binding on all parties to the proceedings or action and or those doing under them .... and cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary to the policy of the Court, .... or if the consent was given without sufficient material facts or in general for a reason which would enable the Court to set aside an agreement”.

“As Windham J said in the introduction to the passage quoted above from Hiran's case, a court cannot interfere with a consent judgement except in such circumstances as would afford good ground for varying or rescinding a contract between the parties”.

21. In its decision in *S M N –vs- Z M S & 3 Others [2017] eKLR*, the Court of Appeal stated as follows:

“ 17. There is no dearth of authorities on the law governing the setting aside of consent judgments or orders.... Generally, a court of law will not interfere with a consent judgment except in circumstances such as would provide a good ground for varying or rescinding a contract between parties.”

22. In the case of the *Board of Trustees National Social Security Fund versus Micheal Mwalo [2015] eKLR* the court held as follows:

“The judgment arose from a consent of the parties to the suit. The law pertaining to the setting aside of consent judgments or consent orders has been clearly stated. A Court of law will not interfere with a consent judgment except in circumstances such as would provide a good ground for varying or rescinding a contract between parties. To impeach a consent order or a consent judgment, it must be shown that it was obtained by fraud, or collusion or by an agreement contrary to the policy of the Court.”

23. In the case of *Kenya Commercial Bank Ltd -vs- Specialized Engineering Company Ltd [1982] KLR* at page 485, Harris J put it this way:

- “ 1. A consent order entered into by counsel is binding on all parties to the proceedings and cannot be set aside or varied unless it is proved that it was obtained by fraud or collusion or by an agreement contrary to the policy of the court or where the consent was given without sufficient material facts or in misapprehension or ignorance of such facts in general for a reason which would enable the court to set aside an agreement.
2. A duly instructed advocate has an implied general authority to compromise and settle the action and the client cannot avail himself of any limitation



by him of the implied authority to his advocate unless such limitation was brought to the notice of the other side.”

24. From the above decisions, the grounds on which a consent judgment may be set aside include: fraud; mistake; collusion; an agreement being contrary to the public policy of the court; lack of sufficient material; ignorance of material facts; and any sufficient reason that may permit an agreement to be set aside.
25. The Applicant avers that the consent was procured illegally and fraudulently. That the consent unprocedurally reviewed the orders issued in the HCCC No. 452 of 1979 where he was granted possession of the suit property. He accuses the Plaintiff of taking advantage of his advocate’s illness and recording the consent in his favour.
26. Black’s Law Dictionary defines “fraud” as; “Knowing misrepresentation or knowing concealment of material fact made to induce another to act to his or her detriment.”
27. Although the Applicant claims that his Advocate was absent during the drawing up and adoption of the consent, the consent and the Decree therein state otherwise. The two documents clearly indicate that his Advocate was present.
28. Final orders for disposal
  - a. Having considered the matter, I find that the Applicant has not satisfied the requirement to set aside the consent judgment.
  - b. The application is therefore declined.
  - c. It is dismissed with no order as to costs.
29. It is so ordered

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 23<sup>RD</sup> DAY OF OCTOBER 2025 VIA MICROSOFT TEAMS.**

**J. G. KEMEI**

**JUDGE**

Delivered Online in the presence of:

1. N/A for the Plaintiff
2. Peter Njogu Mbugua is present in person
3. N/A for the 2<sup>nd</sup> Defendant
4. CA- Ms Yvette Njoroge

