



REPUBLIC OF KENYA



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

Muturi v Mwangi alias John Njaramba & 2 others (Environment and Land Case E002 of 2021) [2025] KEELC 7937 (KLR) (17 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7937 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND CASE E002 OF 2021
MN GICHERU, J
NOVEMBER 17, 2025

BETWEEN

JOHN NJARAMBA MUTURI PLAINTIFF

AND

SAMUEL NDUNG’U MWANGI ALIAS JOHN NJARAMBA 1ST DEFENDANT

STEPHEN IRUNGU NGUGI 2ND DEFENDANT

CATHERINE WANJIKU NDUNGU 3RD DEFENDANT

RULING

1. This ruling is on the notice of motion dated 16-6-2025. The motion is brought under Orders 9 rule 9, 22 rule 22 and 45 of the Civil Procedure Rules and all other enabling provisions of the law seeks the following orders.
 - i. That this matter be certified as urgent and service be dispensed with in the first instance.
 - ii. That the firm of J.K. Ngaruiya and Company Advocates be granted leave to represent the 1st Defendant in place of the firm of Chris Maina and Co. Advocates.
 - iii. Stay of execution of the judgment and decree entered against the 1st Defendant on 25-5-2023 pending the hearing and determination of this application.
 - iv. Review and setting aside of the judgment and decree dated 25-5-2023.
 - v. The costs of this application be provided for.
2. The motion is based on seven (7) grounds and it is also supported by an affidavit dated 16-6-2025. The gist of the motion is as follows. Firstly a judgment was passed against the 1st Defendant on 25-5-2023 for a refund of Kshs. 600,000/= and payment of damages amounting to Kshs. 300,000/= to the 2nd and 3rd Defendants. Secondly, the 1st, 2nd and 3rd Defendants have been charged jointly in Kigumo Court in



Criminal case No. 2014 of 2019 over transactions relating to the suit land. Thirdly, the investigating officer found that the 1st Defendant did not forge any signature and that the second Defendant did not make any withdrawal from his bank account to pay the 1st Defendant as alleged. Fourthly, it is clear that the 1st Defendant did not participate in any fraud and illegal transfer of the suit land. Finally, the suit was not defended by the 1st Defendant and he did not therefore get a chance to give this evidence in the case. It is the fault of the 1st Defendant's counsel that this evidence was not filed in court. For the above and other reasons, the 1st Defendant prays for the above orders.

3. The motion is opposed by the 2nd and 3rd Defendants who have filed a notice of preliminary objection dated 22-7-2025 in which they object to the motion by the 1st Defendant on the following grounds. Firstly, the application as laid before court is fatally defective, incompetent, most frivolous, vexatious, spiteful and an abuse of the due process. Secondly, the orders sought in the application lack legal merit and are neither tenable nor maintainable in law. Thirdly, the court having delivered a judgment and subsequent final orders of the Court is rendered functus officio. Finally, an account of the previous application by the 1st Defendant dated 8-6-2023 and the ruling of the Court delivered on 25-1-2024, the application and any issues raised hereof are res judicata.
4. In addition to the preliminary objection, the first Defendant has filed a replying affidavit dated 22-7-2025 in which he deposes as follows. One, this suit was filed in the year 2021 and it was heard and concluded. Two, the motion is filed to thwart the execution of the decree which has started and a warrant of arrest has been issued. Three, the 1st Defendant forged documents for the suit land which he purported to sell the 2nd and 3rd Defendants as per the annexed sale agreement dated 10-10-2015. Four, the introduction of new and suspect evidence at this stage is ill-informed and a misconception. Finally, the 1st Defendant who was represented by an advocate made an informed choice not to defend the matter and if he was aggrieved by the orders of the Court, he should have appealed.
5. I have carefully considered the motion in its entirety including the affidavits, the grounds, the record and the written submissions. I find that the following issues arise.
 - i. Whether the motion meets the threshold in Order 9 rule 9 of the Civil Procedure Rules.
 - ii. Whether Order 22 rule 22 of the Civil Procedure Rules has any application in this matter?
 - iii. Whether the prerequisites to the grant of an order of review under Order 45 Civil Procedure Rules have been met.
6. On the first issue, I find that the application falls short of the threshold in Order 9 rule 9 of the Civil Procedure Rules because it has neither been served upon the outgoing advocate nor has his consent been sought and obtained by the proposed incoming advocate. The rule provides as follows.

“Where there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court-

 - a. upon an application with notice to all parties; or
 - b. upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”

As can be seen from the motion dated 16-6-2025, it has not been served upon the firm of Chris Maina and Co. Advocates who are on record for the 1st Defendant. The motion is to be served on the firm of Kirubi, Mwangi Ben and Co. Advocates for the 2nd and 3rd Defendants only. Moreover, there is no



consent from the firm of Chris Maina and Co. Advocates signifying that they have consented to the firm of J.K. Ngaruiya and Co. Advocates coming on record for the 1st Defendant. Service of the motion on the outgoing counsel or obtaining his consent are mandatory requirements under Order 9 rule 9 Civil Procedure Rules.

7. Regarding the 2nd issue, I find that Order 22 rule 22 of the Civil Procedure Rules has no application in this case. It provides as follows.

22(1) “The Court to which a decree has been sent for execution...”

The decree herein has not been sent to this Court from another court. The decree in question here emanates from this Court. Order 22 rule 22 Civil Procedure Rules has no application to this Court’s decree.

8. Coming to the final issue, I find that the motion dated 16-6-2025 falls short of the conditions set out in Order 45 rule 1 of the Civil Procedure Rules. The conditions are,

- i. discovery of new and important matter or evidence which was not within the knowledge of the Applicant when the decree was passed or
- ii. mistake or error apparent on the face of the record or
- iii. any other sufficient reason and
- iv. such application must be made without unreasonable delay.

Looking at the current motion, the reasons for making it are two. The first one is that the investigating officer found that the 1st Defendant did not forge any signature. This discovery was on 26/4/2022. The judgment of this Court is dated 25-5-2023 which is one year after the discovery that the 1st Defendant did not forge any signature. In his affidavit dated 16-6-2025, the 1st Defendant has not stated when he discovered this finding by the investigating officer. More importantly, if the 1st Defendant did not forge any signature, he knew it even before the investigating officer found out. He did not therefore require the investigating officer to tell him about it. Since the record shows that the 1st Defendant was served on 26-10-2021 with the pleadings and the summons to enter appearance, he should have entered appearance within 15 days as required by the summons. That would mean by 11-11-2021. He was then required by Order 7 rule 1 Civil Procedure Rules to file his defence within 14 days of entering appearance. That would be around 25-11-2021.

Order 7 rule 1 Civil Procedure Rules provides

“Where a Defendant has been served with a summons to enter appearance he shall, unless some other or further order be made by the court, file his defence within 14 days after he has entered appearance in the suit and serve it upon the Plaintiff within fourteen days from the date of filing the defence and file an affidavit of service.”

All these timelines are set by the law.

9. From the above, it is clear that the 1st Defendant knew all through that he had not forged any signature at the time he was served with the pleadings and summons to enter appearance. This was on 26-10-2021. He then chose not to file his defence until June 2025 which is almost four years later.



He also chose to ignore this suit completely yet the summons to enter appearance served upon him on 26-10-2021 had a clear warning which read as follows.

“Should you fail to enter an appearance within the time mentioned above, the Plaintiff may proceed with the suit and judgment may be given in your absence.”

The 1st Defendant cannot be heard to say that he was not forewarned of the eventuality that he faces now. It was all written in the papers that he was served with on 26-10-2021.

10. For the above stated reasons, I find no merit at all in the notice of motion dated 16-6-2025 which I dismiss with costs to the 2nd and 3rd Defendants.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 17TH DAY OF NOVEMBER, 2025.

M.N. GICHERU JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

1st Defendant's Counsel – Miss Njoka

2nd and 3rd Defendant's Counsel – Mr Mwangi Ben

