

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELC CASE NO. E002 OF 2021**

**GEORGE NDULA**

**MERITEI.....PLAINTIFF/APPLICANT**

**VERSUS**

**MAURICE OUNDO ODUOR & 61**

**OTHERS.....DEFENDANTS/APPLICANTS**

**THE LAND REGISTRAR KAJIADO.....62<sup>ND</sup>**

**DEFENDANT**

**HON. ATTORNEY GENERAL.....63<sup>RD</sup>**

**DEFENDANT**

**RULING**

1. This **Ruling** is in respect of two **Notices of Motions** dated **9<sup>th</sup> July 2025** and **14<sup>th</sup> July 2025**.
2. The **Notice of Motion** dated **9<sup>th</sup> July 2025** by the Plaintiff/Applicant is brought under; **(Section 1A, 1B, 3A 34 and 63 of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules 2010)**

3. It seeks orders;

**1) Spent.**

**2) THAT the 1<sup>st</sup> to 61<sup>st</sup> Defendants/Respondents do give the Plaintiff/Applicant vacant possession of the land known as Kajiado/Kaputiei North/6386 within seven (7) days of the Court's Orders or within such reasonable period as the court deems fit.**

**3) THAT in default of giving vacant possession within seven (7) days of the Court's orders or within such reasonable period as the court will deem fit, the 1<sup>st</sup> to 61<sup>st</sup> Defendants/Respondents be evicted from the land known as Kajiado/Kaputiei North/6386.**

**4) THAT the Office Commanding Station (OCS) Kajiado do assist in the eviction for purposes of peace and order.**

**5) THAT the Honourable court do issue any other and or further orders, and or directions in the interest of justice and fairness.**

**6) THAT the 1<sup>st</sup> to 61<sup>st</sup> Defendants/Respondents do pay costs.**

4. The ground are on the face of the Notice of Motion and are set out in paragraphs a to k.
5. The Application is supported by the Affidavit of George Ndula Meritei, the Plaintiff/Applicant, sworn on the 9<sup>th</sup> July 2025.
6. The 1<sup>st</sup> to 61<sup>st</sup> Defendants/Respondents filed Grounds of opposition.
7. The 1<sup>st</sup> to 61<sup>st</sup> Defendants' Notice of Motion is dated 14<sup>th</sup> July 2025 brought under; **(Section 1A, 1B, 3A and 80 of the Civil Procedure Act, Chapter 21 Laws of Kenya, Order 45 and 51 of the Civil Procedure Rules, 2010, Article 48 of the Constitution of Kenya and all other enabling provisions of the law)**
8. It seeks orders;
  - 1) Spent.**
  - 2) Spent.**

**3) THAT the Judgement of this Honourable Court entered on 14<sup>th</sup> November 2024 be and is hereby reviewed and/or set aside.**

**4) THAT costs of this application be provided for.**

9. The grounds are on the face of the application and are set out in paragraphs 1 to 17.

10. The Application is supported by the affidavit of Jacktone Ouma Odunga, the 1<sup>st</sup> Defendant/Applicant, sworn on the 14<sup>th</sup> July 2025.

11. On the 31<sup>st</sup> July 2025, the court with the consent of the parties directed that the two motions be canvassed by way of written submissions.

**The Plaintiff's submissions in response to the Notice of Motion dated 14<sup>th</sup> July 2025.**

12. They are dated 19<sup>th</sup> September 2025. Counsel relied on **Order 45 rule 1 of the Civil Procedure Rules** and the

case of **Pancras T. Swai Vs. Kenya Breweries Limited (2014) eKLR .**

13. It is submitted that the Defendant's contention that the judgement in the Criminal Case forms new evidence is baseless as the prosecution has since preferred an appeal against the said judgement.

14. It is further submitted that the acquittal of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants does not automatically invalidate or negate the findings of this Honourable Court which the required burden of proof was discharged as opposed to criminal proceedings which required the prosecution to prove its case beyond reasonable doubt. He has put forward the case of **EACC Vs. Otieno & 5 Others (2023) KEHC 783 (KLR).**

15. Counsel further submitted that the 1<sup>st</sup> to 61<sup>st</sup> Defendants ought to appeal against the Judgement dated 14<sup>th</sup> November 2024 and that this application has been brought after a long delay. He has put forward the cases of **Stephen Gathua Kimani Vs. Nancy Wanjira Waruingi T/a Providence Auctioneers, Civil Appeal No. 142 of**

**2012; Ebei Korodi Cloprita Vs. Margaret Naliaka & 2 Others (2020) eKLR .**

He prays that the Application be dismissed with costs.

**The Plaintiff's Submissions in support of the Notice of Motion dated 9<sup>th</sup> July 2025.**

16. They are dated **24<sup>th</sup> September 2025.**

Counsel submitted that a successful litigant is entitled to enjoy the fruits of his judgement. He has put forward the case of **Bryan Michael Rickis Vs. James Chepkoiywa & Another. ELC Case No. 232 of 2023.**

17. It is also submitted that the judgement has not been appealed against. The 1<sup>st</sup> to 61<sup>st</sup> Defendants have put up structures and have remained on the suit property. He has put forward the case of **Grace Maundu Kilungya Vs. Matheka Makuthi & Another (2019) eKLR.**

He prays that the Application be allowed with costs.

**The 1<sup>st</sup> to 61<sup>st</sup> Defendants' Submissions.**

18. They are dated **25<sup>th</sup> September 2025.**

Counsel submitted that the judgement in the criminal case is new evidence which could not be produced before judgement.

19. It is further submitted that the Defendants are apprehensive that if the judgement dated 14<sup>th</sup> November 2024 is not reviewed, the Plaintiff will execute the decree thereby leading to a miscarriage of justice. Reliance is placed on **Order 45 Rule 1 of the Civil Procedure Rule;** and **Section 80 of the Civil Procedure Act and the case of Esther Ngonyo Gitaru Vs. Dominic Chege Gitari Busia ELC No. E040 of 2021.**

20. It is also submitted that there are sufficient reasons to review the judgement dated 14<sup>th</sup> November 2024. They pray that the Application be allowed.

**Analysis and Determination.**

21. I have considered the two Notice of Motions, the rival submissions and the authorities cited. The issue for Determination is whether the 1<sup>st</sup> to 61<sup>st</sup> Defendants have made out a good case for review of the judgement of this court dated 14<sup>th</sup> November 2024.

22. It should be noted that the 1<sup>st</sup> to 61<sup>st</sup> Defendants had earlier filed the Notice of Motion dated 2<sup>nd</sup> December 2024 seeking that the judgement dated 14<sup>th</sup> November 2024 be set aside. This court upon considering all the facts, dismissed the said application in the ruling dated 26<sup>th</sup> June 2025.

23. As things stand, no appeal has been preferred against the said Judgement.

24. **Order 45 rule 1 of the Civil Procedure Rule** provides that;

**“(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.”**

25. It is the 1<sup>st</sup> to 61<sup>st</sup> Defendants’ contention that the judgement in the criminal case constitutes new evidence which could not be produced before judgement.

26. I agree with the plaintiff’s submission that the acquittal of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants does not invalidate or negate the findings of this court which the required burden of proof was discharged. In the case of **Ethics Anti-Corruption Commission Vs. Otieno & 5 others (2023) KEHC 783 (KLR)** the court stated thus;

**“Be that as it may, it is my finding that even where a prosecution results in an acquittal a judgement of that trial does not absolve the person acquitted of civil liability.....this is given that the burden of proof is different in both**

**instances that in criminal cases being beyond reasonable doubt and that in civil cases being on a balance of probabilities...”**

27. I am not satisfied that the acquittal of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> Defendants constitutes new evidence.

28. I find that no grounds have been advanced to warrant this court to review and or set aside the judgement dated 14<sup>th</sup> November 2024.

29. The Application is found to be without merit and the same is dismissed with costs to the Plaintiff/Respondent.

30. It is not in dispute that the Plaintiff has judgement in his favour. There is no appeal preferred against it. The plaintiff therefore ought to be left to enjoy the fruits of his judgment.

31. I find merit in the **Notice of Motion** dated **9<sup>th</sup> July 2025** and the same is allowed in the following terms;

***a) THAT the 1<sup>st</sup> - 61<sup>st</sup> Defendants are hereby directed to give vacant possession of the land known as Kajiado/Kaputiei - North/6386 to the***

***plaintiff within thirty (30) days from the date of this ruling.***

***In default; the Plaintiff be at liberty to evict the 1<sup>st</sup> to 61<sup>st</sup> Defendants through lawful means.***

***b) THAT the OCS Kitengela Police Station do ensure peace and order during the said eviction.***

***c) THAT costs of this Application shall be borne by the 1<sup>st</sup> to 61<sup>st</sup> Defendants.***

**Dated, Signed and Delivered at Kajiado this 13<sup>th</sup> day of November 2025.**

**L. KOMINGOI**

**JUDGE.**

**IN THE PRESENCE OF:**

Ms. Khafafa for the Plaintiff.

Mr. Aburili for the 1<sup>st</sup> to 61<sup>st</sup> Defendants.

N/A for the 62<sup>nd</sup>, 63<sup>rd</sup> Defendants.

Court Assistant - Peter.

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