



**Sabore v Wanene & another (Environment and Land Case  
19 of 2021) [2025] KEELC 7699 (KLR) (6 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7699 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND CASE 19 OF 2021  
LC KOMINGOI, J  
NOVEMBER 6, 2025**

**BETWEEN**

**TULETO OLE KISHAPUI SABORE ..... PLAINTIFF**

**AND**

**JOSEPH MUIGAI WANENE ..... 1<sup>ST</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR, KAJIADO ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This Ruling is in respect of the Notice of Motion dated 4<sup>th</sup> March 2025 brought under; (Section 80 of the *Civil Procedure Act*, Cap 21, Order 45 and 51 (1) of the Civil Procedure Rules)
2. It seeks orders that;
  1. Spent.
  2. Spent.
  3. That the Honourable Court be pleased to set aside and or review the Judgement delivered on 11<sup>th</sup> July, 2024 and Decree issued on 26<sup>th</sup> July, 2024 in the instant suit.
  4. That In The Alternative, the 2<sup>nd</sup> Defendant/Applicant be granted leave to file a Statement of defense as the same raises triable issues.
  5. That the costs of this Application be in the cause.
3. The grounds are on the face of the application and are set out in paragraphs 1 to 10.
4. The Application is supported by the affidavit of Timina Ingonga, District Land Registrar Kajiado, sworn on the 4<sup>th</sup> March 2025 and a further Affidavit sworn on the 12<sup>th</sup> June 2025.
5. The Application is opposed.



There is a Replying Affidavit sworn the by Plaintiff/Respondent.

6. The Notice of Motion was canvassed by way of written submissions.
7. The 2<sup>nd</sup> Defendant's/Applicant's submissions are dated 13<sup>th</sup> October 2025 while Plaintiff's/Respondent's are dated 14<sup>th</sup> October 2025.
8. I have considered the Notice of Motion, the Affidavits in support, the responses thereto, the rival submissions and the authorities cited. The issue for determination is whether this application is merited.
9. In the case of *Patel v EA Cargo Handling Services Ltd (1974) EA 75 William Dreyffus P* at Page 76 stated;

“The main concern of the court is to do justice to the parties, and the court will not impose condition in itself to fetter the discretion given to it by the rules. I agree that where it is a regular judgement as is the case here, the court will not usually set aside the judgement unless it is satisfied that there is a defence on the merits. In this respect, a defence on merits does not mean in my view, a defence that must succeed. It means as Sheridan J put it, “a triable issue that is an issue which raises a prima facie defence and which should go to trial for adjudication.”

10. Order 45 Rule 1 of the Civil Procedure Rules 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. (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.”

It is clear from the above provisions that an application for review rests on the conditions set out.

11. The Court of Appeal in *Marete & 2 Others v Kinyua (sued as the legal representative of the Estate of Patrick Kinyua Iringo – Deceased)(2025) KECA 1003 (KLR)* held;

“.....In *National Bank of Kenya Limited v Ndungu Njau (1997) eKLR* this court had this to say regarding a review arising from a mistake or error apparent on the face of the record;

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self –evident and should not require an elaborate argument to be established. It will not



be a sufficient ground to review that another judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect-exposition of the law and reached on erroneous conclusion of law. Miscontinuing a statute or other provision of law cannot be a ground of review...”

I have gone through the grounds set out in the Notice of Motion dated 4<sup>th</sup> March 2025 and I am not convinced that there is an error apparent on the face of the record in the Judgement dated 11<sup>th</sup> July 2024.

12. The 2<sup>nd</sup> Defendant/Applicant also seeks that the said judgement be set aside because they have a defence that raises triable issues.

In the case of Cecilia Wanja Waweru v Jackson Wainaina Muiruri & Another (2014) KECA 492 (KLR) the court relied on the case of Richard Nchapi Leiyagu v IEBC & 2 Others; Civil Appeal No. 18 of 2013, where the court expressed itself as follows;

“We agree with the noble principles which go further to establish that the court’s discretion to set aside an ex parte judgement or order for that matter, is intended to avoid injustice or hardship resulting from an accident, inadvertence or excusable mistake or error but not to assist a person who deliberately seeks to obstruct or delay the course of justice.”

13. I have gone through the court record and I find that this suit was first filed in Machakos High Court in the year 2012. The suit was later transferred to this court. I also note that the 2<sup>nd</sup> Defendant was duly served with pleadings and summons to enter appearance but neglected to enter appearance and or file defence. They did not participate in these proceedings.
14. I find that no justifiable grounds have been brought forth to warrant the setting aside of the said judgement.
15. I agree with the Plaintiffs/Respondents submission, that the 2<sup>nd</sup> Defendant/Applicant has not demonstrated any justifiable grounds to warrant the court to set aside the said Judgement.
- The Application has been brought after an inordinate delay.
16. In my view, if there is any difficulty in complying with the said Judgement, the Plaintiff can approach the court to seek any rectification to reflect the specific resultant titles that ought to be cancelled.
17. It would appear, the 2<sup>nd</sup> Defendant is advancing the 1<sup>st</sup> Defendant’s interest after Judgement. The 1<sup>st</sup> Defendant was duly represented by counsel during these proceedings and he has filed a Notice of Appeal.
18. I find that this Application is an abuse of the Court process. The 2<sup>nd</sup> Defendant cannot come at this stage to seek that the Judgement be set aside for the reason that they did not participate in the proceedings.

The 2<sup>nd</sup> Defendant has come rather too late.

19. I find no merit in this application and the same is dismissed with costs to the Plaintiff/Respondent.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 6<sup>TH</sup> DAY OF NOVEMBER 2025.**

**L. KOMINGOI**

**JUDGE.**



**In The Presence Of:**

N/A for the Plaintiff.

N/A for the 1<sup>st</sup> Defendant.

Ms. Kubai for the 2<sup>nd</sup> Defendant.

Court Assistant – Mateli.

