

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
CIVIL CASE NO. 64 OF 2008

JONATHAN MSUKO SHOKA

.....**PLAINTIFF**

VERSUS

1. SAMUEL GONA NDORO
2. JOSEPH KADENGE NDORO
3. DAVID NYORO
NDORO.....DEFENDANTS

RULING

1. The application dated 24/7/2025 seeks orders of review and/or setting aside of the ruling delivered by this court on 25th June 2025. The principal grounds relied on are that there is a judgment delivered on 10th December 2010 challenging title to the said property and that the ruling relied on the participation of a party who was never joined to the principal proceedings.
2. The court has considered the application, which is premised on the provisions of **Order 45 Rule 1** of the Civil Procedure Rules. That order states as follows:

“(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.”

3. **Order 45 Rule (1)** sets out the rules which therefore restrict the grounds for review to the following grounds:

- a. Discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made, or;
- b. On account of some mistake or error apparent on the face of the record; or
- c. Any other sufficient reason.

4. National Bank of Kenya -v- Ndungu Njau [1997] eKLR, the Court of Appeal held as follows:

“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 for 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 an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.”

5. This court agrees with the Respondent that there is no error on the fact of the record as claimed by the Applicant for two main reasons. First, the issue of whether the applicant could as the only surviving party to the suit apply to the court for orders was an issue that this court focused on and made a merit determination in its ruling and the only

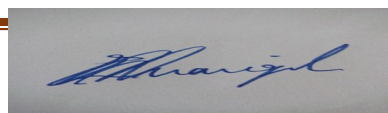
recourse there is for any aggrieved party is an appeal to the Court of Appeal and not a review since it does not fall under the categories of grounds for review under **Order 45 Rule 1** CPR as held in **National Bank of Kenya (supra)**.

6. Secondly, that the applicant may suffer grave prejudice for being compelled by the orders of this court to execute transfer forms is also not a ground for review under **Order 45 Rule 1** CPR. Further, in view of the fact that the judgment was passed against the applicant and it has not been appealed or set aside, this court stated in its ruling at **paragraph 17** as follows:

“The effect of the judgment dated 10/12/2010 dismissing the Plaintiff’s claim and affirming the validity of the defendants’ interests is that execution must follow in terms of the judgment of the Magistrate’s Court, which was affirmed by this Court. The Respondent cannot now refuse to give effect to a judgment of the court by declining to sign mutation or transfer forms. In such circumstances, the law allows the Deputy Registrar to execute the required documents on his behalf to ensure the decree is not defeated.”

7. There is no reason why the court cannot give effect to its own judgment by way of supplemental proceedings that will enable execution.
8. The application dated **24/7/2025** is hereby dismissed with costs for want of merit.

Dated, signed and delivered at Malindi on this 19th day of November 2025.



**MWANGI NJOROGE
JUDGE, ELC, MALINDI.**