



**Sairowua v Olorgeso & 5 others (Environment and Land Case
E017 of 2021) [2025] KEELC 7815 (KLR) (12 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7815 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND CASE E017 OF 2021
LN GACHERU & JM GACHERU, JJ
NOVEMBER 12, 2025**

BETWEEN

REPES SAIROWUA PLAINTIFF

AND

NAREIYO OLOGESO 1ST DEFENDANT

DAVID MUTUTO MUMO 2ND DEFENDANT

KILELE KENNEDY KIPROP T/A LEL & ASSOCIATES

ADVOCATES 3RD DEFENDANT

NAREIYON OLOGESO 4TH DEFENDANT

**DISTRICT LAND REGISTRAR, NAROK NORTH DISTRICT 5TH
DEFENDANT**

THE HON ATTORNEY GENERAL 6TH DEFENDANT

RULING

1. The matter for determination is the Notice of Motion Application dated 2nd November 2021(4), filed by 2nd Defendant/Applicant, David Mututo Mumo (who was the Plaintiff in the Counterclaim). The Application is anchored under Section 80 of the *Civil Procedure Act* Cap 21 and Order 45 Rule 1(a) and (b), order 51 Rule (1) of the Civil Procedure Rules, 2010.
2. The Applicant has sought for review of the judgment delivered on 24th October 2023, and the consequential orders arising therefrom; and for costs of the Application be provided for.
3. The Application is supported by various grounds among them; that the court did render a Judgment in this matter on 24th October 2023; that the court do review and correct part of its judgment, particularly paragraph 140 on page 98, wherein the court directed the District Land Registrar (4th



- Defendant in the Counterclaim) to amend the Land Register to include Olkinyei Group Ranch as the registered owner of the disputed land.
4. The Applicant argues that this directive was made in error because Olkinyei Group Ranch ceased to exist on or about 30th April 2009, after land allocations were completed by the Narok South District Land Adjudication and Settlement Officer, who allocated individual parcels to members. One of those members, the late Ntalameya Ologeso, had already been registered as proprietor of the suit land on 26th May 2011, and allocated 68.50 Ha, as shown in the Green card held by the Land Registrar. Ntalameya Ologeso, now deceased, was the husband of the late Nariyon Ologeso (the 1st Defendant), who later sold the property Cismara/olkinyei/790, to the 2nd Defendant/Applicant.
 5. The 2nd Defendant/Applicant therefore seeks that the court do review its part of the judgment and instead orders that the Land Register be amended to include Ntalameya Ologeso (deceased), as the registered owner of the suit land, pending proof of Confirmation of Grant in respect of his estate.
 6. The application is supported by the Affidavit sworn by Victor Ayieko(Advocate), who attached a copy of the said judgment, the area list, and the Green card as prove of the fact that the suit land was registered in the name of Ntalameya Ologeso(deceased), and should not be registered in the name of Olkinyei Group Ranch.
 7. In his Supporting Affidavit sworn on 2nd December 2024, the deponent averred that he represented the 2nd Defendant/Applicant, and that the Court delivered a Judgment on 24th October 2023, where in it directed the District Land Registrar (4th Defendant in the Counterclaim) to amend the land Register to include Olkinyei Group Ranch as the registered owner of the disputed land.
 8. He averred that this direction was erroneous since Olkinyei Group Ranch ceased to exist around 30th April 2009, following land allocations by the Narok South District Land Adjudication and Settlement Officer. The late Ntalameya Ologeso, a former member of the group ranch and husband to the late Nariyon Ologeso (1st Defendant), had already been registered as proprietor of the suit land on 26th May 2011, as evidenced by the Area List and Green card.
 9. Further, that Nariyon Ologeso(deceased), later sold the parcel of land Cismara/Olkinyei/790, to the Applicant. The deponent urged the court to review its Judgment and direct the 4th Defendant in the Counterclaim to amend the Land Register to reflect Ntalameya Ologeso (deceased) as the registered owner of the suit land pending Confirmation of Grant in respect of his estate, arguing that such a correction is necessary to serve the interests of justice.
 10. Service of the application was duly effected upon all parties via electronic means as confirmed by the Affidavit of Service sworn by Rosemary Wairimu, the Process server on 3rd December 2024, who annexed copies of the email transmissions to the respective Advocates on record including Lel & Associates, Kamwaro & Co., Cheruto & Co., and the Office of the Attorney General.
 11. However, only the Plaintiff/ Respondent through the Law Firm of Kamwaro& Co Advocates, filed a Replying Affidavit in opposition to the instant Notice of Motion Application. The Plaintiff, Repes Sairowua, swore the Replying Affidavit dated 3rd February 2025, and averred that the applicant does not deserve the orders sought.
 12. The Plaintiff/Respondent took issue with the Supporting Affidavit, which is sworn by the Advocate on record for the Applicant, Mr Victor Ayieko. He contended the advocate's (Mr Victor Ayieko) averments amount to adducing evidence to the bar, which is inadmissible.
 13. The Plaintiff/Respondent further averred that the matters of marriage between Nariyo Ologeso and the late Ntalameya Ologeso and/ or dissolution of Olkinyei Group Ranch are matters of fact and



not law, hence the said Advocate as deponent was incompetent to depone on them in his Supporting Affidavit.

14. It was his contention that this Application for review is a disguised Appeal on the Judgment of the court delivered on 23rd October 2023, and that the Applicant has not demonstrated any error apparent on the face of the record to warrant a review or correction of the judgment vide this application.
15. Further, he averred that as advised by his advocate on record, under Section 80 of the *Civil Procedure Act*, AND Order 45(1) of Civil Procedure Rules on review, such a remedy is available where no appeal has been preferred and/ or filed against the judgement sought to be reviewed. He contended that the Applicant filed a Notice of Appeal, and applied for proceedings and thus this remedy is not available for him.
16. He also contended that his advocate on record has advised him that such an application for review ought to be filed without unreasonable delay, but this Application was filed 13 months after the said judgment was delivered, which is unreasonable delay, and which delay has not been explained.
17. The Plaintiff further averred that his advocate on record has advised him that an Application for review is made where it is evident there is error apparent on the face of record or new evidence has been discovered, and which is not the case herein.
18. He urged the court to dismiss the instant application since the Applicant has failed to satisfy or justify the error complained of, and it would be unjust or erroneous to entertain or admit this application, which is not meritorious.
19. The Applicant filed a Further Affidavit, through Victor Ayieko Advocate, who clarified that any person acquainted with the facts of a case may competently swear an Affidavit. Further, that the issue of marriage between Nareiyon Ologeso and the late Ntalameya Ologeso was conclusively determined in the said Judgment, and that the alleged error on the face of the record to warrant review is glaring. He also deponed that although a Notice of Appeal was filed, no Memorandum of Appeal was lodged, and therefore the application for review is properly before this Court as the said Notice of Appeal stands withdrawn by operation of law after sixty days.
20. The Application was canvassed through written submissions, wherein the 2nd Defendant/ Applicant filed his submissions dated 19th September 2025, through Ayieko Kangethe & Co Advocates and urged the court to allow the said Application. The Plaintiff/ Respondent filed his submissions dated 2nd October 2025, through Kamwaro & Co Advocates, and urged the court to dismiss the instant Application, which is devoid of merit.
21. In his written submissions, the 2nd Defendant/Applicant, raised the following issues for determination;
 - i. Whether the 2nd Defendant/Applicant's advocate can swear the Supporting Affidavit.
 - ii. Whether the 2nd Defendant/Applicant is entitled to the orders sought
22. On whether the 2nd Defendant/Applicant's advocate can swear the Supporting Affidavit, the Applicant submitted that an advocate is legally permitted to swear an Affidavit in support of an application so long as they are well versed with the matter. He argued that the Advocate who swore the Supporting Affidavit has been on record for the 2nd Defendant/Applicant since the commencement of the matter and, therefore, the facts deponed to are within his personal knowledge and derived from the court record.



23. Thus, it was his further submissions that the said Supporting Affidavit cannot be considered contentious, since the question of marriage between Nareiyon Olorgeso and the late Ntalameya Olorgeso was conclusively determined by Court in its Judgement.

24. To support this position, the Applicant relied on the case of Oriental Commercial Bank Ltd v Shreeji Contractors Ltd & 2 Others. The Applicant also relied on Order 19 Rule 3(1) of the Civil Procedure Rules, which provide as follows;

“Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove. Provided that in the interlocutory proceedings, or by leave of the court, an Affidavit may contain statements of information and belief showing the sources and grounds thereof.”

Additionally, reliance is placed on the decision in Salama Beach Hotel Limited v Mario Rossi [2015] eKLR.

25. On whether the 2nd Defendant/Applicant is entitled to the orders sought, the Applicant submitted that the instant Notice of Motion Application meets the threshold for review as set out in Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules.

26. The Applicant acknowledged filing a Notice of Appeal, and requesting typed proceedings, but clarified that no Memorandum of Appeal was ever filed, as he abandoned the appellate route, and chose instead to seek a review of the judgment. He further argued that a Notice of Appeal merely signifies an intention to appeal, and does not constitute an Appeal itself.

27. Citing Rule 85(1) of the Court of Appeal Rules, the Applicant also submitted that failure to file a substantive Appeal within the prescribed time results in the Notice of Appeal being deemed withdrawn. Consequently, since no Appeal was instituted, the Applicant is entitled to pursue a review under Order 45 Rule 1 of the Civil Procedure Rules.

28. The Applicant further submitted that the Judgment of this court delivered on 23rd October 2023, contains a clear error on its face, particularly at paragraph 140 on page 98 where the court directed the 4th Defendant in the Counter-claim to amend the Land Register to include Olkinyei Group Ranch, as the owner of the suit land pending Confirmation of grant by the estate of Ntalameya Olorgeso.

29. The Applicant further maintained that this was a mistake or error apparent since Olkinyei Group Ranch ceased to exist in 2009, following adjudication. He further submitted that the late Ntalameya Olorgeso, who was a member of the said Group Ranch, had already been registered as the proprietor of the suit land on 26th May 2011, as evidenced by the Green card produced in court. Further, that upon the dissolution of Olkinyei Group Ranch, the Narok South District Land & Adjudication Officer allocated the late Ntalameya Olorgeso 68.50 Ha. which constitutes the current suit land.

30. Reliance is placed on the case of National Bank of Kenya Limited v Ndungu Njau [1997] eKLR, where the Court held that;

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

31. Therefore, the Applicant urged the Court to allow the instant Application, and directs the Land Registrar to amend the Land Register to reflect the name of Ntalameya Ologeso (deceased), as proprietor pending confirmation of grant.
32. The Plaintiff/Respondent, through Kamwaro & Co Advocates, filed his written submissions opposing the application. The Plaintiff/Respondent raised the following issues for determination;
 - i. Whether the applicant has met the threshold of Order 45 of the Civil Procedure Rules?
 - ii. Whether an Advocate can swear and/or depone to contentious evidential issues and if not, whether the Supporting Affidavit herein is competent?
 - iii. Who bears the costs?
33. On whether the applicant has met the threshold of Order 45 of the Civil Procedure Rules, the Plaintiff/Respondent submitted that the application herein does not satisfy the requirements of Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules, as no new or important matter has been discovered, and no mistake apparent on the face of the record has been demonstrated.
34. It was the Respondent further submissions that if the 2nd Defendant/Applicant is dissatisfied with the reasoning of the Court, the proper remedy is an Appeal and not review. He relied on the decision of the Court of Appeal in *National Bank of Kenya Limited v Ndungu Njau* [1997] eKLR.
35. The Respondent further submitted that the instant Application was filed after an unreasonable delay of thirteen months from the date of judgment, contrary to the requirement that a review must be sought without unreasonable delay. The Respondent relied on the cases of *Panalpina (E.A.) Ltd v Ngae* (1999) LLR 2370 and *Afri Credit Finance Ltd v Safari Image Ltd* (HCCC No. 980 of 1995), in support of the proposition that inordinate delay defeats a review application even where error is shown.
36. The Respondent also made reference to the case of *Kisyo Investments Ltd vs Attorney General & Another* (Civil Appeal No. 31 of 1995), where the Court of Appeal held that a party who files a Notice of Appeal cannot thereafter apply for review, but if application or review is filed first, the party is not prevented from filing appeal subsequently even if a review is pending.
37. On whether an Advocate can swear and/or depone to contentious evidential issues and if not, whether the Supporting Affidavit herein is competent, the Respondent submitted that the Supporting Affidavit sworn by Advocate for the Applicant is incompetent, as it introduces contentious factual matters that should have been sworn by the client. Reliance is placed on the cases of *Regina Wairimu Mwangi Gitau v Boniface Nthenge* [2015] eKLR and *Simon Isaac Ngugi v Overseas Courier Services (K) Ltd* [1998] eKLR, where the Court held that ;

“..... it is not competent for a party’s advocate to depose to evidentiary fact at any stage of the suit”.

In addition, Rule 9 of the Advocates Practice Rules prohibit advocates from appearing as an advocate in a case wherein he might be required to give evidence either by affidavit or even orally. By swearing an affidavit on behalf of his client where issues are contentious, an advocate’s affidavit creates a legal muddle with untold consequences.”

38. In conclusion, the Plaintiff/Respondent urged the Court to dismiss the instant Application for Review with costs to the Plaintiff/ Respondent for being devoid of merit.



39. The above are the grounds for and against the instant Application, the rival written submissions, and cited authorities which this court has carefully considered and renders itself as follows;-
40. It is not in doubt that on 24th October 2023, this court (constituted differently,) delivered a judgment, wherein, it dismissed the Plaintiff's suit together with the 2nd Defendant's counter-claim, but went ahead and held that the only order commending itself for issuance was rectification of the title to reflect the first registration of the suit land;
41. As such, the 4th Defendant was directed to cancel the certificates of titles issued to the Plaintiff and 2nd Defendant, and the 4th Defendant to the Counter-claim was directed to amend the Land Register and include Olkinyei Group Ranch as the registered owner of the suit land pending proof of confirmation of grant by the estate of Ntalameya Ologeso.
42. It is the above findings that the 2nd Defendant/ Applicant wishes the court to review and hold that the Land Register be amended to include Ntalameya Ologeso as the owner of the suit land, pending confirmation of grant by the estate of the late Ntalameya Ologeso.
43. It was the Applicant's contention that the above holding is an error apparent on the face of record since the said Olkinyei Group Ranch was dissolved upon adjudication and allocation of the suit properties to members of the Group Ranch, and Ntalameya Ologeso, was registered as the owner of the suit land, as per Green card produced in court as an exhibits.
44. Apart from the Plaintiff/Respondent, none of the other parties opposed the instant Application. The Plaintiff could not hear of the said review, and took issue with the deponent of the Supporting Affidavit, and the delay in filing the instant application.
45. The above being the background of this Application, the two issues for determination are;-
 - i. whether the Applicant's advocate could swear or deposed the Supporting Affidavit as he did in support of the instant Application;
 - ii. ii) Whether the instant application for review is merited.

I. Whether the Applicant's advocate could swear or depose the Supporting Affidavit as he did in support of the instant Application.

46. It is indeed not in doubt that in the instant Application, Victor Ayieko Advocate swore the Supporting Affidavit, and averred that the court did render a judgment on 24th October 2023, which judgment contained an error apparent, and thus the prayer for review of the said Judgment.
47. From the court record, Mr Ayieko was on record for the 2nd Defendant/Applicant during the trial. He deposed that Olkinyei Group Ranch is no longer in existence after its dissolution; that the Ntalameya Ologeso was registered as the owner of the suit land as per the copy of the Green card, and that Ntalameya Ologeso was the husband to Nareiyo Ologeso, the 1st Defendant herein.
48. The Plaintiff/Respondent contended that the above issues are factual, and not issues of law, and thus the advocate was incompetent to swear or depone about them. However, Mr Ayieko contended that he was competent to swear the Supporting Affidavit since he was versed with the facts having represented the 2nd Defendant/Applicant herein during the trial that culminated in the Judgement being sought to be reviewed.
49. Having considered the relevant provisions of law, and the various decided cases, it is not in doubt that an advocate can swear an Affidavit in support of a contentious application or matters, but such



an advocate must clearly state the sources of their information and the grounds for their belief with precision. If the advocate is swearing an Affidavit on information and belief, they must include the grounds for that belief in the Affidavit. The said Affidavit should clearly distinguish between facts the advocate knows personally and information they have received from other sources. See the case of Kamlesh M.A. Pattni v. Nasir Ibrahim Ali & 2 others.

50. In the instant Application, the deponent Mr Victor Ayieko Advocate deponed to facts that were already settled in the Judgment that is sought to be reviewed, and the said Judgment, and proceedings are on record. The deponed matter are within the personal knowledge of Mr Ayieko Advocate, who was acting for the 2nd Defendant/Applicant, and thus he is competent to swear the said Supporting Affidavit.
51. The court will rely entirely on the findings in the case of Oriental Commercial Bank Ltd v Shreeji Contractors Ltd & 2 Others; where the court held;-

“The affidavit of Paul Murimi Kiongo merely makes deductions from matters which are on the court record in the form of judgment and rulings. For the most part, the impugned paragraphs contain re-phrased sections of the lower court’s Judgment on 31st May 2017. The advocate was on record for the Respondent’s in the case before the lower court. These are matters within the court’s record. They cannot be said to be contentious issues. It would probably have been preferable for those matters to have been submitted on rather than deponed to in his affidavit – but none of the matters are contentious, oppressive or scandalous. I therefore decline the invitation to strike them off.”

II. Whether the instant Application for review is merited.

52. The instant Application for review is brought under Section 80 of the *Civil Procedure Act*, and Order 45(1) of the Civil Procedure Rules, which provision of law provides that the court has discretion to review its judgement or orders on certain conditions and the principles to be considered, which include: The applicant must be a person "aggrieved" by the decision. No appeal against the decision has been preferred (if an appeal was allowed), or the decision is not appealable.
53. Further the review must be sought on specific grounds: discovery of new and important evidence, a mistake or error apparent on the face of the record, or "any other sufficient reason" which allows the court broad discretion. The application must be made without unreasonable delay. The court has the discretion to grant a review to prevent abuse of process and ensure justice. See the case of Associated Insurance Brokers vs Kenindia Assurance Co. Ltd [2018] KECA 809 (KLR)
54. It is therefore apparent that the power to review orders of the court are provided for under Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules, and review is an available remedy. Further; under these provisions of law, the court may review its orders where it is satisfied on either one of three grounds. First, that there is discovery of new and important evidence which was not available at the time of the hearing despite the exercise of due diligence. Such evidence must be credible, material to the case, and not merely confirmatory of what was already presented. (See Francis Origo & Another v Jacob Kumali Mungala [2005] eKLR).
55. Further, review may also be granted where the court is satisfied that there is a mistake or error apparent on the face of the record. Such an error must be self-evident, not requiring extensive argument to establish. (See Nyamogo & Nyamogo Advocates v Kago [2001] eKLR). Lastly, a court may grant review for any other sufficient reason.



56. The 2nd Defendant/ Applicant herein needed to establish the above principles, before the court could grant the sought orders. In the instant Application, the 2nd Defendant/Applicant has alleged that the Judgement of the court on para 140 page 98, contains error apparent on the face of record, since Olkinyei Group Ranch ceased to exist on or around 30th April 2009, after preparation of Area list AND allocation of parcels of land to members of the Group Ranch.
57. It was contended that the holding that the rectification should be carried out by the 4th Defendant to the Counter-claim to register the land in the name of Olkinyei Group Ranch is an error apparent on the face of record, and therefore, the court should review the same to read the rectification to be done, and suit land be registered in the name of Ntalameya Olorgeso.
58. By reviewing and holding as above, the meaning and tempo of the said judgement will be very different. The court has considered the pars sought to be reviewed, and which is alleged to be an error, and it is very clear that the court did hold that the rectification should be done to reflect the first registration of the suit land.
59. From the exhibits produced in court especially the Green Card, the first registration was to Olkinyei Group Ranch on 10th June 2009. The alleged registration to Ntalameya Logesa was on 26th May 2011, and that was not the first registration. The court was very clear that the rectification should reflect 1st Registration, and 1st Registration herein is to Olkinyei Group Ranch. Where is the error apparent on the face of record?
60. The Applicant herein, might have expected a different opinion or holding. He is aggrieved by the holding of the court, and the best remedy is to seek an Appeal at the Court of Appeal. Asking this court to review the said para 140 of the Judgement of the court is tantamount to asking this court to sit on its own Appeal, which is not tenable in law.
61. The court has also considered the Death Certificate in respect of Ntalameya Olorgeso, and it is apparent that he died on 10th October 1975. At the time of subdivision of the land held by the Olkinyei Group Ranch, Ntalameya Olorgeso was deceased, and he could therefore not have been the first registered owner. The Green card shows the land was registered in the name of Ntalameya Olorgeso on 26th May 2011, long after he had died. The 2nd Defendant/Applicant cannot therefore allege that the suit land was properly registered in the name of Ntalameya Olorgesa and the said rectification and title should be issued in his name, awaiting proof of confirmation of grant of his estate.
62. If the Applicant is aggrieved by the findings and holdings of this court in its Judgment of 24th October 2023, he ought to have filed and pursued his Appeal to logical conclusion, but not seek a review, which in essence is an Appeal, disguised as an Application for review. See the case of Attorney General & another v. Andrew Maina Githinji & another
63. Further, the law is very clear that a review application ought to be filed without unreasonable delay. The Judgement sought to be reviewed was delivered on 24th October 2023, and the instant Application was filed on 2nd November 2024, after about 13 Months. The Application is brought after a long delay, and the said delay has not been explained. See the case of Panalpina (E.A) Ltd vs Ngae (1999)LLR 2370 (HCK).
64. Therefore, this court finds and holds that the instant Application was filed after unreasonable DELAY, which has not been explained, and thus the application is not merited.
65. For the above reasons, and having carefully considered the instant application, the court record, rival written submissions, and the relevant provisions of law, this court finds the instant Application not



merited. Consequently, this Notice of Motion Application dated 2nd November 2024 is dismissed/ and/ or disallowed entirely with costs to the Plaintiff/ Respondent’.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK THIS 12TH DAY OF NOVEMBER 2025.

L. GACHERU

JUDGE

Delivered online in the presence of

Elijah Meyoki – Court Assistant

Mr. Kamwaro for the Plaintiff/Respondent

Ms. Wacera holding brief for Mr. Ayieko for 2nd Defendant/Applicant

N/A by the other parties

