



REPUBLIC OF KENYA



KENYA LAW
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Sawa & 40 others v Tumwet & 2 others (Environment and Land Case 15 of 2002) [2025] KEELC 7622 (KLR) (5 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7622 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE 15 OF 2002**

CK NZILI, J

NOVEMBER 5, 2025

BETWEEN

MASAI SAWA & 40 OTHERS & 40 OTHERS & 40 OTHERS PLAINTIFF

AND

ALFRED TUMWET & 2 OTHERS & 2 OTHERS & 2 OTHERS DEFENDANT

RULING

1. The judgment in this matter was delivered on 18/12/2013. A decree thereto was issued on 18/12/2013. The defendants were barred by way of a permanent injunction from subdividing I.R. 2914 and I.R. 6189, measuring 678 acres, based on the list of 138 members, including public facilities. From the record, the judgment immediately elicited a notice of appeal by the three defendants dated 20/1/2014.
2. The court record of what happened between 18/12/2013 and 28/11/2023 is not clear. What I notice is that on 23/11/2024, the Land Registrar appeared and told the court that the decree of the court states that the land be shared equally among 41 original members, but the court did not state who the 41 original members were, and also who the purchasers with interest are to be taken into account.
3. The Land Registrar said that she was not able to implement the decree. Equally, she said that the status on the ground is that the ground-sharing status is not equal, and it is likely to cause chaos. The Land Registrar also said that the titles held by the National Tilting Center could not be released, for they had to confirm with the occupation on the ground and did not accord with the decree of the court. The Land Registrar sought the guidance of the court. The court directed the parties to discuss the issue and come up with a way forward. The parties sought a mediator to be appointed. On 8/12/2024, they reported that the mediation was unsuccessful.
4. With this background, what is before the court is an application dated 20/2/2025, seeking an order that the County Land Registrar and the County Surveyor, Trans Nzoia, visit L.R. Nos. 6890 and 5565/6, to subdivide the same into 41 equal portions as decreed by the court and the parties to bear survey costs



equally, in default of payment of which any party whose share of the fees may delay the process, the other party shall pay, and if not refunded within 21 days, be executed as would be costs of the suit.

5. In a supporting affidavit sworn by Joseph Mashine Chepkurui, as per the authority attached as PMC-(1), he says that the plaintiffs' initial suit was upheld while the defendants' counterclaim was dismissed in the judgment.
6. The applicant deposes that the decree has unreasonably taken long to be implemented, yet the existing status quo favours some plaintiffs, since they have more than what the court decreed, and that despite there being a mechanism for the implementation of the decree, some of the beneficiaries have resorted to initiating a survey process whose aim is to defeat the court decree. The deponent states that the ends of justice dictate that the court decree be implemented to the letter, hence the prayers sought.
7. What the court has to establish first is whether the decree issued on 18/12/2013 is in tandem with the judgment. In the letter dated 12/7/2023, from the District Land Registrar, she expresses difficulties in complying with the judgment dated 18/12/2013 as regards who the original 41 members of Chemkengen Farm are, subdivision of the land equally among the 41 members, yet the ground occupation is different.
8. The court record also has another decree issued on 13/6/2022, which comprises Clause No. (1). The said clause appears to have been introduced in an amended decree issued on 8/9/2021.
9. The record also includes an order dated 1/11/2018 by the Deputy Registrar, which introduced a clause that the land be shared among the 41 original members.
10. The preparation and issuance of decrees is governed by Order 21 of the Civil Procedure Rules. A decree is a final expression of an adjudication, which conclusively determines the rights of the parties as regards the matter in controversy.
11. A decree, therefore, has to be extracted from a judgment. After a judgment is passed, one party extracts a draft decree, which is served to the other side for approval. It must reflect the judgment. If approved, the same is forwarded to the deputy registrar to sign and seal it.
12. Amendment of a judgment is provided for under Section 99 of the *Civil Procedure Act*. It only applies where there are clerical or arithmetical mistakes. A court may be formally moved to correct such errors through exercising the slip rule. See *Nguruman Ltd -vs- Attorney General & Another* [2021] eKLR, *Hosea Nyandika Mosagwe & Others -vs- County Government of Nyamira* [2022] eKLR.
13. In *Fredrick Otieno Outa -vs- Jared Odoyo Okello & Others* [2017] eKLR, the Supreme Court of Kenya held that the slip rule does not confer upon a court any jurisdiction to sit on appeal over its own judgment or to extensively review a judgment as to substantially alter it.
14. In this matter, the record shows that the draft decree was sent to the firm of Kiaire & Co. Advocates by M/S Kiplege & Kurgat Advocates, by a letter dated 7/1/2014. The said law firm, by a letter dated 6/2/2014, declined to approve it, refuting the aspect of sharing the land equally among 41 original members, after the interest of the purchasers was taken into account, including all public facilities such as roads, schools, markets, dips among others. The law firm said that the reasons in a judgment do not comprise a decree.
15. Another draft decree was sent to the law firm by a letter dated 22/2/2014 for approval. The defendants therein filed a notice of appeal vide a notice dated 20/1/2014, against the judgment.
16. The cause of action in the plaintiff's case was contained in the amended plaint dated 30/11/2007 and filed on 7/4/2008. The principal and the sole prayer was for a permanent injunction barring the



- defendants as directors of the 4th defendant, by themselves, their agents and servants, from surveying and subdividing the 678 acres, company assets, namely, undefined suit premises, which they had leased to Land Ltd for a period of 15 years.
17. It is trite law that parties are bound by their pleadings. See Independent Electoral and Boundaries Commission & Others -vs- Mutinda Mule & Others [2004] eKLR. Courts can only grant reliefs that are prayed for and proved by the parties. In Trojan & Co. -vs- RM. N.N. Nagappa Chettiar, AIR 1953 SC 235, the court held that the decision of a case cannot be based on grounds outside the pleadings of parties, and it is the case pleaded that has to be found. The court said that without an amendment of the plaint, it was not entitled to grant the relief not sought.
 18. In this matter, there is no indication whether any of the parties to the original judgment applied for review, setting aside, or amendment of the judgment, or the resultant decree. There cannot be two conflicting decrees in a suit arising out of the same judgment. The two decrees must be looked into in line with the judgment delivered on 18/12/2013. The judgment did not issue any other relief apart from a permanent injunction barring and restraining the 1st, 2nd, and 3rd defendants, as the directors of the 4th defendant, from subdividing the properties of the 4th defendant measuring 678 acres. The specific parcels of land were not captured in the amended plaint dated 30/11/2007.
 19. Therefore, the court cannot, by the application dated 20/2/2025, grant orders relating to L.R. No. 6890 and 5556/6 to be subdivided, when such parcels of land and the orders sought never formed part of the judgment in the first instance or the resultant decree. The issue of who is entitled to what number of shares out of the 4th defendant's company's properties never formed part of the suit and did not find its way into the determination in the judgment delivered on 18/12/2013.
 20. A specific prayer to that effect had not been pleaded or sought by either of the parties to the judgment. The deputy registrar of the court and the parties have no power to review a judgment and issue a decree that is at variance with the judgment. The court cannot reopen its judgment without a formal application at this stage in the manner suggested in this application, for it is functus officio, and cannot arrogate to itself to do what the law does not grant it powers to exercise post judgment.
 21. The upshot is that the application dated 20/2/2025 is not only incompetent but also lacks merit. It is dismissed with no order as to costs.
 22. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 5TH DAY OF NOVEMBER 2025.

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:

Court Assistant - Dennis

Masai for Serebe for applicants present

Joseph Cherop Ngeiwa present

