

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ELC CASE NO. 113 OF 2015

PAUL HIRBO ISATU.....APPLICANT

VERSUS

ABDRAHMAN AKE HIRBO.....RESPONDENT

RULING

1. Before me is the Notice of Motion Application [The Application] dated **15th October 2025** brought pursuant to the provisions of **Section 1A, 1B 3A, 63(e) and Section 80 of the Civil Procedure Act; Order 9(9) Order 45(1)(2) and (6) and Order 51 (1) of the Civil Procedure Rules 2010; Section 3(2) of the Environment And Land Court Act and Articles 40, 47, 50 and 159 of the Constitution 2010** and wherein the applicant has sought a plethora of reliefs.

2. The reliefs sought *vide* the instant application are as hereunder:-

- (i) **Re-opening of file:** *That this honourable court be pleased to reopen the court file in ELC case NO. 113 of 2015 for purposes of review and enforcement of the judgment delivered on 8th December 2018.*
- (ii) **Leave for review:** *That leave be granted to the applicant to file and prosecute this review application notwithstanding the prior application dated 6th December 2018 and later on 27th May 2025.*
- (iii) **Grounds for review:** *That upon grant of leave, this honourable court do hear and determine the review on the basis of: Discovery of new and important evidence; Fraud and suppression of material facts; procedural irregularities;*

error apparent on the face of the record and abuse of court process relied on in CC 9 of 2009.

- (iv) **Adoption of implementation report:** *That this honourable court do adopt the implementation report dated 18th April 2024 (filed on 19th April 2024 which confirmed encroachment by the respondent but was not considered due to premature closure of the court file.*
- (v) **Boundary & enforcement orders:** *That the honourable court issue enforcement orders consistent with the said report, including recognition and protection of boundaries and quiet possession of parcel No. Marsabit/Mountain/700.*
- (vi) **Injunctive & Eviction orders:** *That this honourable court issue: A permanent injunction restraining the defendant, his agents or assigns from interfering with the applicant's parcel; eviction and demolition orders against the respondents unlawful structures erected on the boundary and applicant's land; cancellation of title processed out of fraud; police supervision by the OCS Marsabit police station to ensure peaceful execution.*
- (vii) **Title out of fraud mutation form:** *That the mutation form dated 7th August 2007, purportedly signed by a deceased person [Wolaga Dabaso, who died in 2003], be declared null and void and the title deed processed therefrom in respect of parcel No. Marsabit/Mountain/1070 be declared fraudulent, unlawful and incapable of conferring proprietary rights.*
- (viii) **Rectification of register:** *That an order be issued to the county land registrar, Marsabit directing that the register for parcel No. Marsabit/Mountain/1070 having been processed through fraud and an illegal mutation be cancelled forthwith*

and the register be rectified to reflect the true and lawful boundary of parcel No. Marsabut/Mountain/700 in accordance with the registrar's reports of 2011 and 2022.

(ix) **Costs**: *That the costs of this application be provided for.*

3. The subject application is premised on various grounds which have been enumerated thereunder. In addition, the application has been supported by the affidavit of the applicant [Paul Hirbo Hisatu] sworn on even date and to which the deponent has annexed a total of eight documents *inter alia*, a copy of the application for review dated 6th December 2018; and 27th May 2025, respectively.
4. The subject application was served upon the respondent. However, the respondent failed to file any response thereto. For good measure, the respondent's counsel received the application and indicated on the face that same did not have the requisite instructions from the respondent.
5. The application came up for direction on 17th November 2025 and whereupon the applicant intimated to the court that same had duly filed and served written submissions in line with the directions of the court issued on 27th October 2025. Moreover, the applicant herein contended that the written submissions had equally been served upon the respondent. In this regard, the applicant intimated to the court that same shall be adopting the written submissions.
6. I do confirm that the written submissions dated 16th November 2025 and filed by the applicant are on record. Moreover, I have taken cognizance of the various issues that have been highlighted at the foot of the said

submissions including the contention that a proper basis has been laid before the court to warrant granting of leave to prosecute the application for review and more so to grant an order of review reviewing the Judgment of the court rendered on the 8th November 2018.

7. Having considered the notice of motion application; the supporting affidavit thereto; the annexures attached thereto and upon taking into account the written submissions filed by the applicant, I come to the conclusion that the determination of the subject application turns on one [1] key issue, *namely*; whether this court is seized of the requisite jurisdiction to entertain and adjudicate upon the subject application and to grant the reliefs sought hereunder.
8. It is imperative to recall and reiterate that the subject suit was filed by the applicant. Subsequently, the suit was heard and determined *vide* judgment rendered on 8th November 2018 and wherein this court [differently constituted] entered Judgment in accordance with the report filed by the Land Registrar dated 23rd May 2018. For good measure, the land registrar's report arose from an order of the court [differently constituted] issued on 20th February 2018 and which directed that the District Physical Planner- Marsabit and the District surveyor- Marsabit visit the suit properties and thereafter prepare a report concerning the dispute before the court.
9. Following the orders of the court made on 20th February 2018, the designated officers indeed visited the locus in quo and thereafter filed a

report dated 23rd May 2018. It is this report which was subsequently adopted and constituted as the judgment of the court.

10. The applicant herein was not satisfied with the judgment of the court and thereafter same proceeded to and file a notice of Appeal, intimating his desire to appeal. Moreover, the applicant also lodged a letter bespeaking proceedings. However, the fate of the notice of appeal under reference is not clear. Nevertheless, the fate of the notice of appeal is irrelevant and inconsequential to the determination of the subject application.

11. First forward, the applicant herein filed an application dated 6th November 2018 and wherein the applicant sought to review, vary, and set aside the judgment rendered on 8th November 2018 and the consequential decree arising therefrom. The said application was heard and disposed of *vide* ruling of this court [differently constituted] delivered on 12th February 2020. Instructively, the application under reference was dismissed for want of merit[s].

12. Undeterred, the applicant herein filed yet another application for review dated 27th May 2025. However, the said application was marked as withdrawn on 25th June 2025.

13. Back to the application for review dated 6th December 2018. I have pointed out that the said application was heard and disposed of on merit[s]. Similarly, it is common ground that the said application was dismissed for want of merit.

14. Notwithstanding the foregoing, the applicant is yet again before this court seeking an order to review, vary and or set aside the judgment of the court rendered on 8th November 2018. It is instructive to highlight that this is the third application on the question of review.

15. The question that does arise and which I must grapple with is whether this court is seized of jurisdiction to entertain an application for review of a judgment which was the subject of a previous application for review or otherwise. Notably, the answer to this question is obtained in the provisions of **Order 45 Rule 6 of the Civil Procedure Rules 2010**. Given the importance of the said provisions, it is instructive to reproduce same.

16. The provisions under reference stipulate thus:-

No application to review an order made on an application for a review of a decree or order passed or made on a review shall be entertained.'

17. My reading and understanding of the provision [supra] drives me to the conclusion that where a previous application for review has been made/ mounted and an order made thereto, no further application for review can be entertained by the court. Pertinently, the provisions under reference are devoid of ambiguity, and the court is restricted in its jurisdiction.

18. I beg to state that a court of law derives its jurisdiction from the constitution, statute or the constituting charter. Furthermore, where the jurisdiction of the court is circumscribed by the law, the court cannot on the basis of innovation, sympathy or empathy, expand its jurisdiction beyond the prescription of the law. Where a court expands its jurisdiction

outside the circumference of the constituting charter, constitution or statute, any proceeding taken and any order made shall be a nullity and amount to nothing in the eyes of the law.

19. In the case of *Macharia & another v Kenya Commercial Bank Ltd & 2 others (Application 2 of 2011) [2012] KESC 8 (KLR) (23 October 2012)* (**Ruling**) the Supreme Court [apex court] stated as hereunder:-

*“A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings. This Court dealt with the question of jurisdiction extensively in *In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011*. Where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to*

prescribe the jurisdiction of such a court or tribunal by statute law.”

20. Additionally, it is imperative to take cognizance of the ratio decidendi in the case of *Phoenix of EA Company Limited v Thiga T/A Newspaper Service (Civil Appeal 244 of 2010) [2019] KECA 767 (KLR) (10 May 2019) (Judgment)*, where the Court of Appeal stated thus:

It is a truism that jurisdiction is everything and is what gives a court or a tribunal the power, authority and legitimacy to entertain any matter before it. What is jurisdiction?

2. In common English parlance, ‘Jurisdiction’ denotes the authority or power to hear and determine judicial disputes, or to even take cognizance of the same. This definition clearly shows that before a court can be seized of a matter, it must satisfy itself that it has authority to hear it and make a determination. If a court therefore proceeds to hear a dispute without jurisdiction, then the result will be a nullity ab initio and any determination made by such court will be amenable to being set aside ex debito justitiae. It is for this reason that this Court has to deal with this appeal first as the result directly impacts Civil Appeal No.6 of 2018 which is related to this one. We shall advert to this issue later. In the meantime, it is important to put this appeal in context. [see also in the matter of Interim Independent Electoral Commission 2011 eKLR; owners of motor vessel Lilian S versus Carltext oil Kenya limited 1989 eKLR; Kenya Ports Authority versus Modern holding EA limited 2018 eKLR].

21. *In a nutshell*, I find and hold that this court is stripped of jurisdiction to entertain and adjudicate upon the application for review, which seems to revisit an issue that had previously been the subject of an application for review by the same party. Such an endeavour [if allowed] would be tantamount to sanctioning abuse of the court process.

FINAL DISPOSITION.

22. For the reasons which have been adverted to in the body of the ruling, I come to the conclusion that this court is stripped of the jurisdiction to entertain and adjudicate upon the subject application. In this regard, the court is enjoined to down its tools at the earliest.

23. In the upshot, the final orders that commend themselves to the court are as hereunder:-

- i. The Notice of Motion Application dated 15th October 2025 be and is hereby dismissed.**
- ii. No orders as to costs.**

24. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MERU THIS
27TH DAY OF NOVEMBER 2025.**

OGUTTU MBOYA, FCI Arb, CPM [MTI].

JUDGE.

In the presence of:

Hussein – Court Assistants

Paul Hirbo Boisatu- Applicant in person.

N/A for the respondent.