

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KITALE**  
**ELC NO. 49 OF 2016**

**EVERLINE** **NANGILA**  
**WEKESA-----PLAINTIFF/RESPONDENT**

**VERSUS**

**MARTIN** **BUKAMU-----1<sup>ST</sup>**  
**DEFENDANT/APPLICANT**  
**EDWARD** **BARASA-----2<sup>ND</sup>**  
**DEFENDANT/APPLICANT**

**RULING**

- 1.** By an application dated **19/9/2025**, the court is asked to review a judgment delivered on **9/9/2021** and substitute it with an order dismissing the plaintiff's suit, stay its execution, grant an interim order, and direct the County Surveyor to provide the ground status showing the existence of **Parcels No. Kwanza/Kwanza/190, 186, and 193**.
- 2.** The reasons are contained on the face of the application and in a supporting affidavit of Martin Bukamu, sworn on **19/9/2025**. It is deposed that the judgment had directed that the defendants be evicted from parcel **No. Kwanza/Kwanza/190**, and

that a survey report had found no encroachment as per annexure **MB-1(a)** and **(b)**.

3. The applicants depose that they are on plots **No. 186** and **193**, while the respondent is on plot **No. 190**, which plots have distinct boundaries. In view of these discoveries, the applicants urge the judgment to be reviewed.
4. The application is opposed through a replying affidavit of Everline Nangila Wekesa, sworn on **29/10/2025**, that after the judgment, the applicants unsuccessfully filed **Eldoret Civil Appeal No. E158 of 2021**, which was eventually deemed as withdrawn as per a copy of an order and an application dated **22/3/2024**, annexed as **CNW-(1)** and **(2)** respectively.
5. The respondent deposes that it has taken the applicants **4** years to file this application, which lacks merit, is misconceived, vexatious, bad in law, a delaying tactic, and is out to deny her from enjoying the fruits of her judgment.
6. The respondent deposes that there is no mistake or error apparent on the face of the record.
7. The applicants rely on written submissions dated **15/11/2025**. Reliance is placed on **Pancras T. Swai**

**-vs- Kenya Breweries Ltd, Nairobi Court of Appeal No. 275 of 2010, National Bank of Kenya -vs- Ndungu Njau Civil Appeal No. 211 of 1996,** and **Timothy Macharia -vs- PS Ministry of Education & Another, Nyandarua ELC JR No. 1 of 2021.**

8. A court may, through review based on mistake or an error apparent on the face of the record, revisit its judgment, decree, or order.
9. In **Karanja -vs- Murigi Civil Appeal No. 68 of 2019 [2025] KECA 517 [KLR] (21<sup>st</sup> March 2025) (Judgment)**, the court said that such an error must be self-evident, not against extensive argument to establish it as held in **Nyamongo & Nyamongo Advocates -vs- Kogo [2001] eKLR.**
10. In **National Bank of Kenya** (*supra*), the court emphasized that a review is not an appeal in disguise and that the mere fact that a court reached a wrong conclusion on law or fact is not a ground for review but one for an appeal.
11. Further in **Stephen Githua Kimani -vs- Nancy Wanjira Warunga T/A Providence Auctioneers [2016] eKLR**, the court said that a party cannot be allowed to invoke the review jurisdiction simply

because they are aggrieved by the decision and have failed to appeal.

- 12.** In the replying affidavit, it has been deposed that the application is filed after **4** years, following the unsuccessful attempt to appeal against the decision. The ground report relied upon by the applicants is dated **March 2020**.
- 13.** PW1 testified on **23/1/2021** and confirmed the encroachment out of a surveyor's report. PW2 was the surveyor who produced a report dated **24/2/2020**, as **P. Exhibit. No. 11**. DW1, the 1<sup>st</sup> applicant, testified and was shown **P. Exhibit. No. 11**.
- 14.** Similarly, the 2<sup>nd</sup> applicant testified as DW2 and was shown the respondent's exhibits initially, **D. Exhibit No. 3**. The applicants closed their case without calling any surveyor to produce the attached map and report now being relied upon **4** years down the line. The record shows that their counsel on record had not sought and obtained summons to produce such a report.
- 15.** The applicants do not say when they obtained this new material or evidence, which would have swayed the court in its judgment. The said documents were

not listed as part of the applicants' documents to be relied upon at the hearing.

- 16.** The court has seen copies of the Court of Appeal at **Eldoret Civil Appeal No. Eld ELC No. 158 of 2021** order of **10/3/2025** showing that Miss Arunga Advocates for the applicants, appeared over the application dated **22/3/2024** and withdrew the notice of appeal.
- 17.** In **Estate of Oliokampai Sarapae Sanguti (Deceased) [2019]**, the court said that where an error on a substantial point of law stares one on the face, there could reasonably be no two opinions, and it was a clear case of the same.
- 18.** In this application, what the applicants are raising is not staring on the face, or flowing from the judgment. It requires a long, drawn process of establishing facts on the ground based on survey maps and the situation on the ground. There was already a surveyor who testified at the hearing. The attached report is by Mr. N.M. Nyaboe, a County Surveyor, whose opinion differs from the one who testified and produced another report.
- 19.** In the **Estate of Olikampui Sunguti** (supra), the court was clear that where there are two opinions,

which can hardly be said to be an error apparent on the face of the record.

- 20.** Prayers numbers **3, 4, and 5** of the application call for the post-judgment re-engagement. The rule of thumb is that courts cannot reopen decisions of peers of equal and competent jurisdiction. See **Kenya Hotel Properties Ltd -vs- Attorney General [2022] KESC 62 [KLR] 40 (7<sup>th</sup> October 2022) (Judgment)**.
- 21.** The doctrine of finality bars a court, except on review, in exceptional and compelling circumstances, from reopening its decree. See **Mwambeja Ranching Company Ltd & another -vs- Kenya National Capital Corporation (Civil Appeal (Application) 30 of 2018) [2023] KECA 660 (KLR) (9 June 2023) (Ruling)**, and **Benjoh Amalgamated Limited & another -vs- Kenya Commercial Bank Limited [2014] KECA 872 (KLR)**.
- 22.** The upshot is that I find no merits in the application dated **19/9/2025**. It is dismissed with costs.
- 23.** Orders accordingly.

**Ruling dated, signed, and delivered** via  
**Microsoft Teams/Open Court** at **Kitale** on this **3<sup>rd</sup>**  
day of **December 2025**.

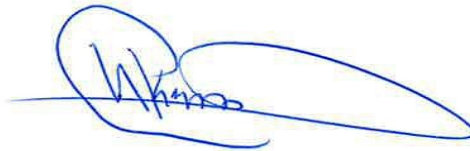
**In the presence of:**

Court Assistant - Dennis

Defendants present

Miss Arunga for applicants present

Mr. Bororio for the respondent present



**HON. C.K. NZILI**  
**JUDGE, ELC KITALE.**