

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT VIHIGA

ELC NO. E001 OF 2023

IN THE MATTER OF VIHIGA DISTRICT MUSLIM ASSOCIATION a.k.a
MUSLIM COMMUNITY CENTRE (Suing through its Chairperson
SHABAN LAHUYA KHAMIS).....PLAINTIFF

VERSUS

JUMA RAMADHAN (Sued on his own behalf and as Trustee,
MBALE MUSLIM MOSQUE COMMITTEE VIHIGA1ST DEFENDANT
ZUBEIR SHOGOBE (Sued on his own behalf as Trustee, MBALE MUSLIM
MOSQUE COMMITTEE VIHIGA COUNTY.....2ND DEFENDANT
THE EXECUTIVE, COUNTY GOVERNMENT OF VIHIGA3RD DEFENDANT
NATIONAL LAND COMMISSION.....4TH DEFENDANT

AND

COUNCIL OF MUSLIM ELDERS, VIHIGA COUNTY.....INTERESTED PARTY

AND

MUSLIM COMMUNITY CENTRE (suing through its Patron
IDI BARAKA LWOYA)APPLICANT

RULING

This ruling is in respect of the Notice of Motion application dated 28th July 2025. The application expressed to be brought pursuant to the provisions of section 3, 3A and 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules seeks for orders that; -

- a) the court be pleased to grant leave to the Interested party to be joined as a party to the suit.

- b) that the court does review and sets aside the judgment dated 15th May 2025 and in its place revoke the registration of the defendants as the owners of land parcel No. KAKAMEGA/BUGONDA/2187 reverting the same to Kakamega County Council to hold the same in trust for the Interested party.
- c) The cost of the application be provided for.

The application was based on the grounds that the court delivered judgement on 15th May 2025, that the Interested Party was not a party to the suit and was not aware of the delivery of the said judgment until he was notified of the same by the plaintiff's advocate. That there is an error apparent on the face of the record, that the judgement was procured through material non-disclosure to the court as to the status of registration of the suit property for which the Interested Party wished to inform the court on.

That there is new and important information that the court ought to consider before tendering its determination over the ownership of land parcel No. KAKAMEGA/BUGONDA/2187. That the Interested party wished to invoke the court's inherent jurisdiction to rectify the errors that are apparent on the face of the record and that it is in the interest of justice that the orders sought in the application be granted.

The application was supported by the averments in the Supporting Affidavit sworn by IDI BAKAKA LWOYA on 27th July 2025 and the annexures thereto.

The application was replied to by the plaintiff vide the Replying Affidavit of Shaban Lahuya Khamis sworn on 12th August 2025. The case of the plaintiff is that there is no organized entity by the name of ‘Muslim Community Centre’ and that the motion is brought to protect personal interest of IDI BARAKA LWOYA in the suit land.

That the plaintiff agrees with certain aspects by the applicant that the judgment delivered on 15th May 2025 has an error on the face.

That the plaintiff does not oppose the application for review and urged the court to grant the application and clarify the judgment to reflect that :

“the suit land, being public land originally held by the defunct Municipal Council of Kakamega in trust for the Muslim Community can, only lawfully vest in the County Government of Vihiga or any other public body authorized under law and any registration in the names of private individual must be proceeded by a lawful process of alienation under the constitution and the Land Act.”

That the court has inherent jurisdiction to ensure its judgment do not occasion an injustice through omission of material facts that are clear and self-evident from the record.

On behalf of the 1st and 2nd Defendants grounds of opposition dated 2nd September 2025 were filed by D.C Chitwa & Co. Advocates. The case of the 1st and 2nd defendants is that there is no entity known as Muslim Community Centre capable of instituting litigation in the cause. That a litigant cannot seek to be joined in proceedings after judgement and purport to question the legality or point errors in a judgment he never participated in as a party. That the intended Interested Party

presenting himself as person named therein as patron has previously litigated other for a with the same evidence being introduced to wit in: -

- i) Vihiga Principal Magistrates court ELC No. 32 of 2020
- ii) Kakamega High Court Appeal

That Muslim Community Centre was part and parcel of the proceedings herein being presented in the instant suit as a plaintiff. That the description of the plaintiff in the suit was Vihiga District Muslim Association a.k.a Muslim Community Centre which is one and the same person as the intended Interested party.

That there is no new evidence or error presented to court to warrant a provocation to interfere with the judgment of the court. That the application is frivolous, vexatious and an abuse of the court's judicial time. The defendants also filed a Replying Affidavit sworn by Zubeir Shogobe on 2nd September 2025 together with the annexures thereto.

The substantive reliefs sought in the application are two namely; an order for joinder of the applicant as a party in the suit and a prayer for review of the judgment.

Grounds for joinder of a party as an interested party are that the party must demonstrate that he/she is a necessary party for the court to effectively and completely to adjudicate upon and settle all questions involved in the suit.

The party seeking to be joined herein is called Muslim Community Centre. The plaintiff in the suit is Vihiga District Muslim Association a. k. a Muslim Community Centre, which participated in the suit fully up to the time of the delivery of the

judgment. No distinction has been drawn between the plaintiff and the applicant herein. It appears that the same organization that filed the suit as plaintiff now seeks to be joined in the suit through one Id Baraka Lwoya who describes himself as Patron of the organization. To the extent that the same party who is plaintiff seeks joined as party in the suit, the prayer for joinder is misconceived and hence unmerited.

The second relief sought is for an order of review of the judgment. The grounds for review, setting aside of court judgements, decrees and orders are set out in Section 80 of the Civil Procedure Act and Order 45 Civil Procedure Rules 2010 which is one of the provisions under which the present application is brought. Those grounds are;

- (i) discovery of new and important matter of evidence which after the exercise of due diligence was not within the applicant's knowledge or could not be produced by him/her at the time when the decree was passed or the order made.
- (ii) or on account of some mistake or error apparent on the face of the record or
- (iii) for any other sufficient reason
- (iv) the application must be brought without unreasonable delay.

The error pointed out by the applicant is that the court in its judgement granted ownership of the suit land to the defendants despite making a finding of illegality thus dispossessing the Interested Parties who are the rightful owners of the suit property without being heard and that the judgment was procured on the material non-disclosure.

These issues, in my view, form grounds of appeal as they question the propriety and merits of the judgment. For this court to interrogate and decide on the same, the court will be sitting on appeal of its own decision.

The other ground on which the application is premised is discovery of new evidence. No such evidence has been exhibited.

The plaintiff who has the same name as the applicant and who appears to support the application had lodged an appeal to the Court of Appeal vide the Notice of appeal dated 27th May 2025. It should pursue the same for redress.

The application lacks merit and is hereby dismissed. Each party to bear own costs of the application.

Ruling dated and signed at Vihiga and delivered virtually this 18th day of December, 2025.

**E. ASATI,
JUDGE.**

In the Presence of;-

Maureen- Court Assistant.

Kundu for the Plaintiff.

Applicant present in person.