



Kamau v Nkumei & another (Environmental and Land Originating Summons E004 of 2021) [2025] KEELC 18449 (KLR) (18 December 2025) (Ruling)

Neutral citation: [2025] KEELC 18449 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E004 OF 2021
LN GACHERU, J
DECEMBER 18, 2025**

BETWEEN

DANIEL KAMAU PLAINTIFF

AND

KARINO OLE NKUMEI 1ST DEFENDANT

NAPANOI ENE NKUMEI 2ND DEFENDANT

RULING

1. The matter for determination is the Notice of Motion Application dated 21st July 2025, brought under Order 1 Rule 10(2), Order 45 Rule 1 and 2, Order 51 Rule 1 of the Civil Procedure Rules, 2010 and Section 1A, 1B and 3A and Section 80 of the *Civil Procedure Act*, Chapter 21 of the Laws of Kenya.
2. The instant Application is filed by the 2nd Defendant/Applicant, Napanoi Ene Nkumei, wherein she has sought for these orders;
 1. That pending the hearing and determination of this application inter-partes, the court be pleased to order a stay of execution of the judgment in this matter delivered on 27th February 2024.
 2. That this court be pleased to stay the execution of the judgment delivered on 27th February 2024 pending the hearing and determination of the succession proceedings in Narok Chief Magistrate's Court Succession Cause No. 41 of 2016.
 3. That pending the hearing of this application this court be pleased to issue temporary order directed at the District Land Registrar Narok North/South/East to forbid all dealings or further registration of any entries in the register over CISMARA/ROTIAN/356 & 357.
 4. That the court be pleased to review, vary and/or set aside the judgment delivered on 27th February 2024 and all other consequential orders therein be reviewed, set aside and/or varied.



5. Costs for this application be provided for.
3. The Application is premised on the grounds set on its face and the supporting affidavit of the Napanoi Ene Nkumei, the 2nd Defendant/Applicant herein who deponed that by an Originating Summons dated 9th February 2021, the Plaintiff/Respondent initiated this suit against the Defendants herein for eviction from the land parcels No.Cismara/Rotian/356 and 357, on the basis that the Plaintiff/Respondent is a bonafide purchaser, and also the registered proprietor of the said parcels of land.
4. Further, that Judgment was delivered on 27th February 2024, in favour of the Plaintiff and the court allowed the eviction of the 2nd Defendant/Applicant from land parcels No. CISMARA/ROTIAN/356 and 357.
5. The 2nd Defendant/Applicant averred that she has now availed sufficient reasons for the court to review the judgment, including the findings of a Forensic Document Examiner's Report filed on 5th May 2025. That the said Forensic Report concluded that the signature and rubber stamp on a letter dated 16th June 2016, allegedly issued by Chief Lemeria Ole Tikani, were forged. Further, that this Chief's letter formed the basis for initiating succession proceedings in Narok Chief Magistrate's Court Succession Cause No. 41 of 2016 concerning the estate of the late Ngongoiya Nkuumei.
6. The 2nd Defendant/Applicant contends that the succession proceedings were initiated fraudulently without her knowledge, despite her being the widow of the deceased, and a rightful beneficiary of his estate. She further averred that land parcels No. Cismara/Rotian/356 and 357, the suit properties in this matter, were created from parcel No. Cismara/Rotian/186, which was part of the deceased's estate.
7. She alleged that the subdivision of land parcel No. Cismara/Rotian/186, was fraudulent, as no actual survey or beaconing was conducted on the ground, and the mutation exists only on paper. She claimed that the Plaintiff/Respondent has since engaged the police to carry out an eviction without establishing the location of the suit properties on the ground, and the 2nd Defendant/Applicant faces imminent eviction and displacement.
8. The applicant argued that the judgment, if left to stand, would perpetuate fraud and aid the Plaintiff/Respondent in acquiring property illegally, which is an affront to public policy. The 2nd Defendant/Applicant emphasized that the court has the inherent jurisdiction to review its orders to prevent injustice and fraud.
9. Therefore, the 2nd Defendant/Applicant urged the court to grant the orders sought in the interest of justice to prevent the execution of an unjust judgment and to protect her rights as a rightful beneficiary of the estate.
10. In her Supporting Affidavit, the 2nd Defendant/Applicant asserted her position as the widow of the late Ngongoiya Nkuumei, and a rightful beneficiary of his estate. She claimed that she is still in possession of the Original certificate of title for parcel No. Cismara/Rotian/186, which has not been surrendered for cancellation or subdivision.
11. The 2nd Defendant/Applicant deponed that on 13th March 2020, upon learning of the fraudulent Petition for letters of administration for the estate of the late Ngongoyia Nkuumei, she filed an objection in Narok High Court vide Succession Cause No. 12 of 2020, since the said succession proceedings were initiated fraudulently without her knowledge or consent, and that the subdivision of the estate was based on forged documents.



12. The application was opposed by the Plaintiff/Respondent herein vide a Replying Affidavit dated 7th August 2025, filed by Daniel Kamau, who emphasized his legal ownership of the disputed land parcels Cis-Mara/Rotian/356 and Cis-Mara/Rotian/357. He stated that he entered into valid contracts to purchase the 2 parcels of land measuring 4.5 acres, which were subdivisions of Cis-Mara/Rotian/186, in February and December 2018 from the administrators of the estate of the late Ngongoiya Ole Nkuumei, who had obtained a grant for the estate in January 2017.
13. The Plaintiff/Respondent relied on Section 93(1) of the Succession Act, which validates transfers of property made by persons granted representation, even if the grant is later revoked or varied.
14. The Plaintiff/Respondent further argued that the *Limitation of Actions Act* bars any action on a contract after six years, making the application for review of the judgment dated 27th February 2024, invalid due to inordinate delay. He highlights that the judgment of this court declared him the rightful owner of the land parcels and that his titles are protected under Section 26 of the Registration of *Land Act*.
15. The Plaintiff/Respondent averred that there is no claim of fraud against him, and that the land was transferred to him by individuals with the legal capacity to do so, following proper procedures. He contended that the application herein lacks merit and should be dismissed with costs, allowing the immediate execution of the decree from the judgment.
16. In her Further Affidavit, the 2nd Defendant/Applicant, stated that the letter of administration purportedly obtained by the Plaintiff/Respondent was fraudulent, and an objection to the proceedings is pending determination before the Succession Court. She deponed that the alleged letter of administration and grant were based on a fraudulent letter purportedly issued by the Area Chief, Mr. Lemeria Ole Tikani.
17. The 2nd Defendant/Applicant referred to Section 76 of the *Law of Succession Act*, Cap 160, which provides for the revocation or annulment of a grant of representation if the court deems it necessary.
18. Additionally, the 2nd Defendant/Applicant cited Article 40(6) of the *Constitution* and Section 26 of the *Land Registration Act*, emphasizing that courts should nullify titles to property proven to be illegally acquired. The 2nd Defendant/Applicant further states that forensic evidence and testimony of Mr. Lemeria Ole Tikani, the Area Chief confirm the fraud and forgery, and argues that no court should aid a litigant in retaining illegally acquired property.
19. The court directed that the instant Application be canvassed by way of written submissions, whereof the parties herein have complied.
20. On 22nd August 2025 the Plaintiff/Respondent filed his written submissions through Mungai, Kemei & Associates Advocates, before the 2nd defendant/ Applicant could have filed hers. He submitted that the 2nd Defendant/Applicant failed to cite legal provisions supporting the stay requested. Reliance was sought on the Black's law Dictionary, 12th Edition which provides for stay as follows;
 1. The postponement of halting of a proceeding, judgment or the like
 2. An order to suspend all or part of a judicial proceedings or a judgment resulting from the proceeding. Also termed stay of execution, suspension of judgment.
21. The Plaintiff/Respondent further submitted that the court questioned the legality of staying its judgment based on proceedings in a Family court, which lacks jurisdiction over land ownership matters under Article 162(2)(b) of the *Constitution*.



22. Further, the Plaintiff/Respondent argued that the Chief Magistrate’s Court cannot interfere with the Environment and Land Court’s decision, citing Section 93(1) of the Succession Act, and case law, including Succession Cause No. 477 of 2015 (In the matter of the Estate of Mutethia Tharaka) and Civil Appeal 7 of 2018 (Sally Njeri Rwimbo v Francis Kiura Gachagua).
23. The Plaintiff/Respondent also emphasized that the Chief Magistrate’s Court lacks jurisdiction to impact the Environment and Land Court’s judgment and he prayed for t dismissal of the Notice of Motion Application. The Plaintiff/Respondent also requested costs for being dragged to court maliciously, leaving the decision on costs to the court’s discretion.
24. The 2nd Defendant/Applicant filed her submissions dated 30th September 2025, through Kamwaro & Co Advocates, and submitted that the application for review and stay of execution of the Judgment delivered on 27th February 2024 is grounded on Section 80 of the Civil Procedure Act, and Order 45 of the Civil Procedure Rules.
25. These provisions empower the court to review its orders or decrees based on the discovery of new and important evidence, errors apparent on the face of the record, or other sufficient reasons, provided that the application is made without unreasonable delay.
26. The Applicant cited several legal authorities to support her case, including Paul Mwaniki v National Hospital Insurance Fund Board of Management [2020] KEHC 7414 (KLR), Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] eKLR, Tokesi Mambili and Others v Simion Litsanga Kisumu Civil Appeal 90 of 2001, Shanzu Investments Ltd v Commissioner for Lands [1993] eKLR, Munyu Maina v Gathiha Maina [2013] eKLR, Republic v Minister for Transport & Communication & 5 Others Ex Parte Waa Ship Garbage Collector & 15 Others [2006] 1 KLR (E&L) 563, Alberta Mae Gacci v Attorney General & 4 Others [2006] eKLR, Benjoh Amalgamated Limited & Another v Kenya Commercial Bank Limited [2014] eKLR, and Sambayon Ole Semera v Kalka Flowers Limited & Another [2021] eKLR.
27. The Applicant argued that the judgment was delivered without the court being informed of fraudulent activities surrounding the mutation and subdivision of parcel No. Cismara/Rotian/186, which led to the creation of parcels No. Cismara/Rotian/356 & 357. She presented new evidence, including a Forensic document examiner’s report dated 5th May 2025, which concluded that the letter used to initiate the succession proceedings was forged.
28. The Applicant contended that the subdivision of the deceased’s estate was fraudulent, and that the original certificate of title for parcel No. Cismara/Rotian/186 had never been surrendered for cancellation or subdivision. She emphasized that the discovery of new evidence was made in May 2025, after the judgment, and that the application was filed without unreasonable delay.
29. The Applicant further argued that courts have an inherent jurisdiction to prevent miscarriage of justice and rectify errors or fraud, even in the absence of explicit statutory provisions. She cited the Court of Appeal’s decisions in Benjoh Amalgamated Limited & Another v Kenya Commercial Bank Limited [2014] eKLR, and Muyodi v Industrial and Commercial Development Corporation & Another [2006] 1 EA 243.
30. Additionally, the Applicant relied on the case of Sambayon Ole Semera v Kalka Flowers Limited & Another [2021] eKLR, which held that;

“if the deed was not his deed at all, (non est factum) he is not bound by his signature any more than he is bound by a forgery. The document is a nullity just as if a rogue had forged his signature. No one can claim title under it, not even an innocent purchaser who bought



on the faith of it, nor an innocent lender who lent his money on the faith of it. No matter that this innocent person acted in the utmost good faith, without notice of anything wrong, yet he takes nothing by the documents.”

31. The Applicant further submitted that the Plaintiff/Respondent obtained judgment unjustly by concealing material facts, and perpetuating fraud on the court. She argued that the court should not aid a litigant in retaining illegally acquired property and emphasized the importance of justice over procedural technicalities. The Applicant pray that the application be allowed, further submitted that the Plaintiff/Respondent has never taken possession of the suit properties.
32. In his Supplementary submissions, the Plaintiff/Respondent refuted the Applicant’s allegations of fraud in acquiring the titles to the parcels of land Cis-Mara/Rotian/356 and 357. He argued that the purchase of the said land parcels was legitimate, supported by evidence presented in court, including transfer forms and consent to transfer documents signed by both Defendants.
33. The Plaintiff/Respondent emphasized that the 1st Defendant is deceased, and did not participate in the application, making the fraud allegations unsustainable. He further cited Section 93 of the Succession Act, which validates the transfer of immovable property by a personal representative to a purchaser, even if the grant is revoked or varied later. The Plaintiff/Respondent referenced the judgment in Succession Cause No. 551 of 2015, In the Matter of the Estate of Josephine Wanjiru Waweru (Deceased).
34. The Plaintiff/Respondent also relied on the doctrine of *lis pendens*, and relied on Succession Cause No. 551 Of 2015: in the Matter of The Estate of Josephine Wanjiru Waweru(Deceased), where the court held;
 - “ 23. The next question is, what do we do with the title deeds already issued? Section 93 of the Succession Act provides as follows:

Purchaser either before or after the commencement of this Act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act.
 - (2) A transfer of immovable property by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral and testamentary or administration expenses, duties, and legacies of the deceased have not been discharged nor provided for...”
35. He further emphasized the importance of finality in litigation, citing Petition No. E536 of 2022, Kenya Pharmaceuticals Distributors Association & Dr. Isaac Kamama Wamurkhu v Anti-Counterfeit Authority & Others.
36. The Plaintiff/Respondent argued that the Applicant’s claim of new evidence, a Chief’s letter obtained nine years prior, was not credible, and did not justify a review. He concluded that the 2nd Defendant’s/ Applicant’s application should be dismissed with costs to the Plaintiff/Respondent.
37. The above are the grounds for and against the instant application, which is basically an application for review and/or stay of execution of the Judgment delivered on 27th February 2024. In prayers No 4 and 5, the Defendant/Applicant sought for stay of the Judgment, which have been overtaken by events because the main issue is review of the impugned judgement.



38. The applicant also prayed for temporary order of injunction, to issue against the District Land Registrar Narok to forbid any further registration of entries on the suit land Cis Mara/ Rotian/ 356 and 357. This prayer will be addressed depending on the outcome of the prayer for review, varying and setting aside of the judgment of the court that was delivered on 27th February 2024.
39. Applications for review are anchored under Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules, which provide;
- “(1) Any person considering himself aggrieved—
- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.
- (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.”
40. it is trite that under the above provisions of law, courts have discretion to review and or set aside its judgement upon certain conditions, however, such discretion must be exercised judiciously.
41. The main principles and grounds for review that must be established by an applicant are; There must be discovery of new & Important Matter or evidence. If the applicant establishes that he has found new, crucial evidence that was not available earlier and could not have been found with due diligence, this could be a ground for review.
42. Further, if there is mistake, inadvertence, surprise, or excusable neglect; if there is honest and genuine error, oversight, or justifiable reason, which is not just carelessness, the same can lead to setting the judgment of the court aside or review of such judgment.
43. Further, if there is prove of fraud, misrepresentation, or other misconduct, which led to obtaining of the impugned judgment, or if the judgment was obtained by dishonesty, deceit, or improper conduct by the winning party, the court can intervene and review its judgment.
44. Further, if there is other sufficient cause, which is a broad ground allowing courts discretion where justice demands it, though generally applied sparingly, the court can allow review.
45. Further, the applicant must establish that no Appeal has been preferred, and can apply for review if no appeal was filed (or allowed) against the decree or order.



46. In the case of National Bank of Kenya Ltd vs Njau (Civil Appeal 211 of 1996) [1997] KECA 71 (KLR) (27 May 1997) (Judgment), the court held as follows;

“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 for 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.”

47. Further, in the case of Fredrick Otieno Outa v. Jared Odoyo Okello & 3 others; SC Petition No. 6 of 2014, [2017] eKLR , the Supreme Court set out the general rule for review of a judgement being;

- i. The Judgment, Ruling, or Order, is obtained, by fraud or deceit;
- ii. The Judgment, Ruling, or Order, is a nullity, such as, when the Court itself was not competent;
- iii. The Court was misled into giving Judgment, Ruling or Order, under a mistaken belief that the parties had consented thereto;

48. The 2nd Defendant/Applicant has averred and submitted that the judgement of the court was obtained on a mistaken belief that the Plaintiff/Respondent had genuinely purchased the suit land, whereas the genesis of the succession cause that led to the subdivision of the initial parcel of land of obtained through fraud. She produced a forensic Document examiners Report which shows that the letter used to file the succession cause in issue was a forgery.

49. This Forensic Document examiner’s Report is new evidence that the 2nd Defendant/Applicant has discovered, which was not in her possession at the time of hearing the matter.

50. If the letter that was used to file the succession cause was a forgery, then the genesis of the Plaintiff’s title is challenged, and the applicant should be given an opportunity to ventilate her case, with the now available new evidence.

51. Having considered the instant Notice of Motion Application on review, the court finds and holds that the 2nd Defendant/Applicant has met the threshold for review of the court’s judgment of 27th February 2024.

52. Since the Judgment of 27th February 2024, has been reviewed, the court finds it prudent to preserve the suit property from further subdivision and registration of any other entries in the register over Cis Mara/Rotian / 356 and 357.

53. For the above reasons the court allows prayers No 6 and 7 of the Notice of Motion Application dated 21st July 2025, with costs to the 2nd Defendant/Applicant.

54. In a nutshell, the Notice of Motion Application dated 21st July 2025, is allowed entirely in terms of Prayers No 6 and 7 with costs to the Applicant.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK THIS 18TH DAY OF DECEMBER 2025.

L. GACHERU



JUDGE

Delivered online in the presence of

Elijah Meyoki - Court Assistant

Ms Mary Muigai for Plaintiff/Respondent

Mr. Kipella holding brief for Mr Kamwaro for 1st defendant and 2nd Defendant/Respondent

L. GACHERU

JUDGE

