

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
PETITION NO. 3 OF 2021

JAMES MWAMUYE MUNGA
PETITIONER

VERSUS

1. TINGA KALU TINGA
2. MUNGA MAGESHO DZILA
3. LAND REGISTRAR, KILIFI
4. THE ATTORNEY GENERAL
RESPONDENTS

AND

PASCHAEAL CHISHENGA MUNGA INTENDED INTERESTED
PARTY

RULING

1. For determination is a Notice of Motion application dated **4th July 2025** brought by the Intended Interested Party under Article 22, 48, 50 and 159 of the Constitution of Kenya, 2010, Section 1A, 1B and 3A of the Civil Procedure Act, Order 1 Rule 10 (2), Order 22 Rule 22 and Order 51 Rule 1 and 15 of the Civil Procedure Rules, for the following orders: -
 - 1)Spent;**
 - 2)Spent;**
 - 3) That this honourable court be pleased to review the judgment delivered on the 27th November 2024;**
 - 4) That leave be granted to enjoin the interested party to the suit herein;**
 - 5) That this honourable court be pleased to set aside all proceedings that were conducted in exclusion of the representatives of WALTER NYALE MWANGO and MUNGA KALU TINGA who are deceased herein and the matter be re-opened for hearing on merit;**

6) That costs of this application be provided for.

2. The application which is based on the grounds listed therein is supported by an affidavit sworn by **Paschael Chishenga Munga**, the Intended Interested Party, who deposed that he was the son and legal representative of the late Munga Kalu Tinga, one of the four joint proprietors of the suit property known as **KILIFI/PINGILIKANI/994**, as evidenced by the Grant and Title annexed as **PCM-1A and PCM-1B** respectively. He stated that the land was jointly owned by the families of Munga Kalu Tinga (deceased), Tinga Kalu Tinga, Munga Magesho Dzila and Walter Nyale Mwango (deceased). He asserted that the Petitioner had misled the Court by claiming entitlement to this parcel while fully aware that he owned a distinct and separate parcel of land, **KILIFI/PINGILIKANI/1021**, as shown in the ownership list annexed as **PCM-1**. According to him, the dispute over the suit property dated back to the 1990s when village elders first heard the matter, but the Petitioner could not identify the land he claimed, and the elders resolved the dispute in favour of Munga Kalu. He further averred that the same dispute was later heard and determined under the Land Disputes Tribunals Act in **LDT Case No. 2 of 1996**, where both parties were heard, a visit to the land was conducted, and judgment was delivered in favour of his late father; that the decision was subsequently adopted as a judgment of the Court (Annexures **PCM-2A, PCM-2B and PCM-3**).
3. He explained that historically, the land belonged to the Wamwakiti Clan and had only been mortgaged by Mzee Ngombo Kiti, his father's elder brother, to one Goda Dzombo for Kshs. 200/-. He stated that in 1997, his father refunded the mortgage money to Goda Dzombo in the presence of witnesses, whereupon Goda Dzombo publicly declared that he had no further claim over the land. He contended that the Petitioner's clan, the Adzakaa, who had only been cultivating the land during the mortgage period, vacated the land thereafter. He maintained that the Petitioner lost the Tribunal case, which was adopted as a judgment of the Kilifi Court

(Annexure **PCM-4**). He further stated that a subsequent claim by the Petitioner's advocate that the Tribunal judgment had been set aside in **SRMCC No. 23 of 1998** was irregular since his father had not participated in those proceedings (Annexure **PCM-5**).

4. The Interested Party further deposed that despite the area having been declared an adjudication section, another Tribunal was irregularly convened to hear the same dispute, and judgment was delivered and adopted in court after his father had already died. He added that **Misc. Civil Application No. 4 of 2009**, in which stay orders had been issued, abated upon the death of the *ex parte* Applicant on **26th November 2009**, but the Petitioner failed to disclose this fact to the Court (Annexure **PCM-6**). He referred to stay orders issued by Justice Omondi on **9th July 2009** (Annexure **PCM-8**) and contended that both the Tribunal and the Magistrate's Court lacked jurisdiction to entertain the matter or issue eviction orders because the land fell within the **Pingilikani Adjudication Section**, as confirmed by the District Land Adjudication Officer (Annexure **PCM-9**).
5. He asserted that the Tribunal's judgment, which was adopted on **5th March 2009**, together with the subsequent eviction orders issued by **Hon. Kiama**, was unlawful, having been issued when the suit land was already under adjudication and when his father, the respondent at the Tribunal, was deceased. He claimed that the Petitioner had misrepresented facts to the Court and sought execution despite the existence of stay orders (Annexure **PCM-10**). He concluded that unless the impugned judgment and eviction orders were set aside, he and his family stood to suffer imminent eviction and irreparable prejudice.
6. In a replying affidavit sworn on **27th October 2025** by the Petitioner, the application is opposed. The Petitioner noted that since the judgment of 27th November 2024, no appeal or other application had been filed. He further explained that prior proceedings already existed in respect of the suit land, including one by Thomas Kiti Soda, who had styled himself as

the Administrator of the Estate of the late Munga Kalu Tinga and had filed Miscellaneous Civil Application No 4 of 2009 (Judicial Review) in that capacity (annexed as “JM-1”). He contended that the land register did not specify whether the four registered co-owners held the property jointly or in common, which gave rise to the legal presumption that upon the death of any one proprietor their interest passed to the surviving proprietors. He asserted that the Court had earlier resolved the matter in his favour (annexed “JM-2”), that any reconsideration of the merits of that judgment could only properly be by way of appeal and not by application, and that the present attempt constituted a shifting of claims without proper legal basis. He therefore prayed that the application be dismissed.

7. On 22nd September 2025, the Court directed the parties to canvass the application by way of written submissions. The time granted to both parties lapsed, and as at the date of preparing this ruling, no submissions had been filed. Upon perusal of the Court Tracking System (CTS), it was evident that neither party complied with the said directions. Consequently, the application is dismissed for failure to comply with the Court’s orders.

**Dated, signed and delivered at Malindi on this 18th day of December
2025.**

A rectangular box containing a handwritten signature in blue ink, which appears to read 'Mwangi Njoroge'.

**MWANGI NJOROGE
JUDGE, ELC, MALINDI.**