REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT VOI

ELCLPET NO. E004 OF 2024

MWASIMA MBUWA WELFARE ASSOCIATION……………… PETITIONER

VERSUS

TEITA ESTATE SISAL LIMITED……………………………1ST RESPONDENT

COUNTY GOVERNMENT OF TAITA TAVETA…………2ND RESPONDENT

TAITA TAVETA, COUNTY EXECUTIVE MEMBER,

MINISTRY OF WATER, SANITATION & IRRIGATION…3RD RESPONDENT

TAITA TAVETA, COUNTY EXECUTIVE MEMBER,

MINISTRY OF LANDS & PHYSICAL PLANNING……….4TH RESPONDENT

LAND REGISTRAR, TAITA TAVETA ……………………..5TH RESPONDENT

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THE HONOURABLE ATTORNEY GENERAL ……………6TH RESPONDENT

RULING

1. This Ruling is in respect to the Petitioner's application dated 13th October 2025 seeking the following orders;

    a) Spent…

    b) THAT this Honourable Court be pleased to vacate, set aside, vary and/or review its judgment delivered on 23.10.2024 dismissing the Petitioner's petition for lack of sufficient evidence

    c) THAT the Honourable be pleased to vacate its judgment dated 23.10.2024 in its entirety and order the Petitioner's suit as having been overtaken by events.

    d) THAT the Honourable Court be pleased to issue any other orders it deems just in the circumstances.

    e) Costs of this application be provided for.

2. The application was premised on the grounds on its face and supported by the Affidavit sworn by Mnjala Mwaluma

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on the 13th October 2025. The Petitioner also filed written submissions dated 2nd December 2025 in support of the application.

3. It was the contended by the Petitioner that the court's finding in dismissing the Petition in its judgment dated 23.10.2024 was arrived at without full and frank disclosure of material facts by the 1st Respondent.

4. It was averred that some of the impugned title documents had been irregularly without the consent and/or notice of all parties herein and the Court irregularly and un procedurally surrendered to the government to effect a conversion and subdivision to the detriment of the Petitioner.

5. It was further averred that the intentional withholding of crucial material facts and/or information by the 1st Respondent undermined the integrity of the judicial process thus leading to an incorrect and/or unjust outcome. The intentional withholding of material facts which would have assisted the Court to make a just finding was done with malice hence depriving this Court from arriving at a just conclusion.

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6. According to the Petitioner, this new and important evidence was out of the Petitioner's reach and only recently found out when executing a Court order issued by Justice Kibunja sitting in ENVIRONMENT AND LAND COURT CASE 103 OF 2007 CONSOLIDATED WITH 358 OF 1998 BEING TEITA SISAL ESTATE =VS=MNJALA MWALUMA & 91 OTHERS.
7. It was contended that the application has been brought without undue delay and no prejudice would be suffered by the Respondents if the said application is withdrawn.
8. In the Petitioners written submissions, Counsel submitted that the 1st Respondent was not candid with the Court as the Petition herein as filed and prosecuted was already overtaken by events and that the whole proceedings were a nullity and overtaken by events since the suit property ceased to exist long time ago. The said title had ceased to exist and converted MWATATE/MWATATE BLOCK 1/14 as per annexure “MM1” as such this court should proceed to review its judgment. Reliance was made to the provisions of Order 45 Rule 1 of the Civil Procedure Rules and several cited cases which the court has considered.

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9. The 1st to 4th Respondents opposed the application vide grounds of opposition dated 28th October 2025 and written submissions dated 8th January 2026 while the 2nd to 4th Respondents filed a Replying Affidavit sworn on 16th December 2025.

10. The 1st Respondent stated that the application is premature and legally permissible since this is the second time the Applicant is seeking to review the judgment of the court. The earlier application was dismissed vide the ruling delivered by this Court on 23rd April 2025.

11. It was contended that the application does not meet the threshold for grant of the order sought since all the allegations being made by the Applicant were addressed by the court in its judgment and further that the said application is an abuse of the court process.

12. It was further contended that an application for review is not a mechanism for re-evaluation of evidence.

13. In its written submissions, it was submitted that the application is barred by the doctrine of res judicata and amounts to an abuse of the court process and further that

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it does not meet the threshold for grant of the reliefs sought.

14. Citing the case of **John Florence Maritime Services Limited vs Cabinet Secretary for Transport & Infrastructure & 3 Others [2015] eKLR**, it was argued that res judicata extends to constitutional litigation.

15. It was also submitted that an application for review is not an appeal and it's not meant to give a party a second bite to the cherry.

16. It was further submitted that the threshold for grant of the orders sought, the alleged new evidence concerning the conversion and surrender predates the suit herein, the judgment sought to be reviewed and the 1st review application together with this application and consequently the assertion that the same constitutes new evidence is false.

17. Relying on several authorities including the case of Court of Appeal case of **Rose Kaiza vs Angelo Mpangahuiza [2009] eKLR**, it was argued that an

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application for review on the ground of discovery of new evidence must be treated with caution.

18. The court was urged to dismiss the application with costs.

19. This court having considered the application, written submissions and affidavits filed by the parties has outlined the following two salient issues in determining the said application;

i. ***Whether the application is merited.***

ii. ***What orders should issue as to costs.***

20. The jurisdiction of the Court to review its own orders is provided for in ***Section 80 of the Civil Procedure Act and Order 45 Rule of the Civil Procedure Rules 2010 Section 80*** stipulates: -

"Any person who considers himself aggrieved—

(a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is allowed by this Act may apply for a review of judgment to the court which passed the decree

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or made the order, and the court may make such order thereon as it thinks fit."

11. ***Order 45 Rule 1 of the Civil Procedure Rules*** is couched in similar terms and goes on to provide the procedure and the conditions that an Applicant must satisfy as follows: -

> ***"45(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,***

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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."

12. The Rules limit the ground for review to be: -

(a) discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or;

(b) on account of some mistake or error apparent on the face of the record,

(c) 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.

13. In this regard, for a Court to review its own orders, it must be demonstrated that there is discovery of new and important matter or evidence. It must also be shown that

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the new evidence was not within the knowledge of the party seeking review or could not be produced at the time the orders were made. Such party must also satisfy the Court that this was the case even after exercise of due diligence.

14. In the instant application, the Petitioner argued that the impugned title was surrendered in 2021 for subdivision and title No. Mwatate/ Mwatate Block 1/ 14 was created and further L.R No. 3880/1 was surrendered to the government for subdivision and title no. Mwatate/Mwatate Block 1/11, Mwatate/Mwatate Block 1/12, Mwatate/ Mwatate Block 1/14 were created and that the same was never brought to the attention of the court and as at June 2024 the said title was non-existent.

15. I have taken the liberty to weigh the alleged new evidence and its veracity within the confines of section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules. This court is being invited to revisit the entire judgment based on one primary ground under Order 45; discovery of new evidence which even with due

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diligence was not available to the court at the time of the trial.

16. It cannot be gainsaid that courts and advocates alike have struggled over the years with defining the appropriate standard of review under Section 80 of the Civil Procedure Act and Order 45 Rule 1 for issues that present mixed questions of law and fact. Despite that difficulty, these issues provide a terrific opportunity for courts and advocates when invoking review jurisdiction to characterize the claim in such a way as to bring the questionable issues within the most favourable standard of review provided for under Order 45 Rule 1 of the Civil Procedure Rules.

17. It is worth noting that where such a review application is based on fact of the discovery of fresh evidence the court must exercise greatest of care as it is easy for a party who has lost, to see the weak part of his case and the temptation to lay and procure evidence which will strengthen that weak part and put a different complexion. In such event, to succeed, the party must show that there was no remissness on his part in adducing

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all possible evidence at the hearing. See the case of **D. J. Lowe & Company Ltd –vs- Bonquo Indosuez, Nairobi Civil Application No.217 of 1998.**

18. In the instant case, while the Petitioner alleges to have obtained new evidence in respect to the title after the delivery of the judgment, it is evident that the said entry being entry number 23 dated 17th November 2021 predates both the filing of the suit and the judgment that is sought to be reviewed. The Petitioner has therefore failed to demonstrate that the said evidence which was available was actually new and could not have been obtained even with the exercise of due diligence.

19. In view of the foregoing, this Court finds that the threshold for review of the judgment of the court has not been met.

20. In respect to costs of the application, the general principle is that costs follow the event meaning the unsuccessful party typically bears the costs unless special circumstances justify otherwise. In the instant application, the court notes that this is the second application filed by the Petitioner seeking for review of the court’s judgment

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and the Petitioner having been unsuccessful the court directs that they shall bear the costs of the said application which shall be payable to the 1st to 4th Respondents only.

21. In conclusion, the court makes the following final orders;

   i) The application dated 13th October 2025 is hereby dismissed.

   ii) Costs to the 1st to 4th Respondents.

Dated Signed and Delivered virtually this 21st day of January 2026.

E.K. WABWOTO

JUDGE

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