



Kipsang (Suing as the Personal Representative of the Estate of Rael Tabsabei (Deceased)) v Rono (Environment and Land Appeal 6 of 2018) [2026] KEELC 322 (KLR) (29 January 2026) (Ruling)

Neutral citation: [2026] KEELC 322 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT AND LAND APPEAL 6 OF 2018
LA OMOLLO, J
JANUARY 29, 2026**

BETWEEN

CHIRCHIR PAUL KIPSANG (SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF RAEI TABSABEI (DECEASED)) APPELLANT

AND

DAVID RONO RESPONDENT

RULING

1. This ruling is in respect of the Appellant/Applicant's Notice of Motion application dated 20th March, 2025. The application is expressed to be brought under Order 45 and Order 51 (1) of the Civil Procedure Rules and Sections 78(1), (2) & 80 of the *Civil Procedure Act*.
2. The application seeks the following prayers;
 - a. That this Honourable Court be pleased to vary and/or otherwise review its judgement dated 18th March, 2021 in so far as its final orders are concerned; and accordingly set out the terms upon which the appeal was allowed and the final orders disposing it.
 - b. That absolutely without prejudice to the order sought in prayer 1, above, the Court be pleased to order the Land Registrar Bomet to cancel the title in respect of that parcel of land known as title No. Kericho/Silibwet/2713 which the Court already found vide its judgement dated 18th March, 2021, was procured fraudulently.
 - c. That the cost of this application be provided for.
3. The application is based on the grounds on its face and the supporting affidavit of the Appellant/Applicant which is sworn on 20th March, 2025.



Factual Background.

4. The Appellant/Applicant filed the Memorandum of Appeal dated 23rd August, 2018 appealing from the judgement delivered in Kericho CMCC Case No. 375 of 2013 on 26th July, 2015.
5. The grounds of appeal were as follows;
 - a. That the Learned Trial Magistrate erred in law and in fact in dismissing the Appellant's case in spite of substantial evidence, both oral and documentary, that the Respondent had altered the position of the portion he purchased from the deceased in the Mutation Forms presented for registration.
 - b. That the Learned Trial Magistrate erred in law and in fact in holding that the deceased was bound by her signatures affixed on the impugned mutation forms notwithstanding the evidence of the eye witnesses that the Respondent had hived off a different site from the one initially surveyed and the fact that the deceased swore an affidavit, prior to her demise; in support of her application for injunction dated 19th September, 2013, wherein she averred that she had executed the said mutation form under the mistaken impression that the portion indicated therein was the one earlier agreed on the ground.
 - c. That the Learned Trial Magistrate erred in law and in fact, in holding that there was a reasonable chance that the surveyor who had surveyed the subject parcel was not qualified and therefore the Respondent was forced to procure the services of a qualified surveyor to draw the mutation forms whereas the Respondent had not even called the so called qualified surveyor as a witness to confirm as much. (sic)
 - d. That the Learned Trial Magistrate erred in law and in fact in holding that the PW 2 (sic), was not a qualified surveyor and therefore relying on a mutation form purportedly signed by surveyor who apparently never visited the suit property and whose evidence and credentials were in fact never submitted in Court.
 - e. That the Learned Trial Magistrate erred in law and in fact in that he totally failed to take into account the Appellant's case and placed undue weight on the Respondent's case.
 - f. That the Learned Trial Magistrate erred in law and in fact in entering Judgment in favour of the Respondent when there were no cogent grounds to sustain the finding.
6. The Appellant therefore sought that the Court sets aside the said judgement and decree with costs.
7. This Court delivered judgement on 18th March, 2021 where it set aside the judgement delivered on 26th July, 2018.
8. The application under consideration first came up for hearing on 23rd June, 2025 when the Court issued directions that it be canvassed by way of written submissions.
9. It was mentioned to confirm filing of submissions and on 24th July, 2025 it was reserved for ruling.

The Appellant/Applicant's Contention.

10. The Appellant/Applicant contends that his deceased mother one Rael Tabsabei filed Kericho CMCC No. 375 of 2013 where she sought the following prayers;
 - a. A declaration that the Defendant obtained registration of L.R NO. Kericho/ Silibwet/ 2713 by fraud.



- b. An Order directing the Defendant to execute the necessary documents so to effect a valid transfer of the said land to the Plaintiff.
 - c. Injunction restraining the Defendant from using, developing, trespassing, selling and/or howsoever interfering with the said land.
 - d. General damages for trespass and denial of easement.
 - e. Damages for breach of contract.
 - f. Interests on (d) and (e) at court rates.
 - g. Any other relief that this Honourable Court may deem fit and just to grant.
11. The Appellant/Applicant also contends that his deceased mother filed the said suit after she sold a portion of land parcel No. Kericho/Silibwet/1964 measuring 0.04 Ha in the year 2009 to the Respondent.
 12. The Appellant/Applicant further contends that a survey was done and his deceased mother executed mutation and transfer forms in favour of the Respondent.
 13. It is his contention that land parcel No. Kericho/Silibwet/1964 was subdivided into land parcel No's Kericho/Silibwet/2528 and 2713. He goes on to state that the said parcels of land were registered in the names of his deceased mother and the Respondent respectively.
 14. It is also his contention that subsequently, the Respondent took possession of a different portion of land parcel No. Kericho/Silibwet/1964 that had not been sold to him.
 15. It is further his contention that they later discovered that the Respondent had allegedly taken advantage of his deceased mother's lack of technical knowledge and colluded with a different surveyor to alter the entries on the mutation forms with a view of switching the physical position of the portion of land that he had purchased.
 16. He contends that the Respondent's actions denied his deceased mother and the beneficiaries of her estate an easement to her parcel of land to date.
 17. He also contends that when the matter was initially filed in Court, the trial Court issued orders stopping the Respondent from fencing off the disputed portion of land.
 18. He further contends that the Respondent allegedly proceeded with the construction while issuing threats to his deceased mother and their family members. He goes on to state that the Respondent's actions allegedly subjected his mother to severe emotional distress that led to a stroke and she later died while the matter was still pending before the subordinate Court.
 19. It is his contention that he was then substituted as the Plaintiff.
 20. It is also his contention that the Learned Trial Magistrate delivered judgement on 26th July, 2025 (sic) and dismissed the suit with costs.
 21. It is further his contention that he was aggrieved by the said judgement and he filed an appeal before this Court.
 22. He contends that this Court delivered judgement on 18th March, 2021 and found that the Respondent had obtained the title deed for land parcel No. Kericho/Silibwet/2713 fraudulently.



23. He also contends that this Court in its judgement, set aside the judgement of the trial Court but inadvertently failed to set out the specific terms upon which the appeal was allowed and/or issue final orders as sought in the Amended Plaint dated 13th September, 2013.
24. He further contends that as a result, the implementation of the said judgement has become onerous.
25. It is his contention that no appeal was filed against the judgement and decree of this Court.
26. It is also his contention that unless the Court reviews its judgement, the said judgement will be rendered academic as it cannot be implemented.
27. It is further his contention that the Court should review its judgement on the ground that there is an apparent error on the face of the record. He goes on to state that the said error is the inadvertent failure to set out the terms upon which the appeal was allowed.
28. He ends his deposition by stating that it is in the interest of justice that the judgement be reviewed so that he can enjoy its fruits.
29. The Respondent did not file any response to the application.

Issues for Determination.

30. The Appellant/Applicant filed his submissions on 23rd July, 2025 while the Respondent did not file any submissions.
31. The Appellant/Applicant reiterates the averments in his affidavit in support of the application and submits on whether he has demonstrated sufficient grounds to warrant the review of the judgement delivered on 18th March, 2025.
32. The Appellant/Applicant relies on Order 45 Rule 1 of the Civil Procedure Rules, the judicial decision of Chandrakant Joshibhai Patel versus R [2004] TLR 218, The Registered Trustees of the Archdiocese of Dar es Salaam versus Chairman of Bunju Village Government & Others, Civil Appeal No. 47 of 2006 and reiterates that the judgement delivered by this Court did not grant any specific reliefs.
33. The Appellant/Applicant submits that before the trial Court, he sought, among other orders, an order directing the Respondent to execute all the necessary documents to effect transfer, an injunctive relief, damages for trespass, breach of contract and denial of easement.
34. The Appellant/Applicant also submits that the absence of final orders in the judgement delivered by this Court has left him in a vacuum as he has a favorable judgement which cannot be executed.
35. The Appellant/Applicant further submits that this omission has made it impossible for him to extract a meaningful decree thereby undermining the effectiveness of the judgement.
36. It is his submissions that the said omission amounts to an error apparent on the face of the record and is a sufficient reason to warrant review.
37. It is also his submissions that the Court should assess and award him damages.
38. It is further his submissions that he had been denied an easement on the suit parcel of land and that this (sic) Court found the Respondent to be in contempt in its ruling delivered on 2nd October, 2015.
39. He submits that despite the said ruling, the Respondent never granted him an easement over the suit parcel of land.



40. He also submits that this Court should invoke its inherent power under Sections 1A, 1B, 3A and 99 of the *Civil Procedure Act* and review its judgement.
41. The Appellant/Applicant concludes his submissions by urging the Court to allow his application in order to secure the ends of justice.

Analysis and Determination.

42. I have considered the Appellant/Applicant's application and submissions. It is my view that the following issues arise for determination;
 - a. Whether the judgment delivered on 18th March, 2021 should be reviewed.
 - b. Whether an order should be issued directing the Land Registrar, Bomet to cancel the title deed for land parcel No. Kericho/Silibwet/2713.
 - c. Who should bear costs of the application.

A. Whether the judgment delivered on 18th March, 2021 should be reviewed.

43. The Appellant/Applicant is seeking that this Court reviews its judgement delivered on 18th March, 2021.
44. The Appellant/Applicant contends that the Court in its judgement delivered on 18th March, 2021 allowed the appeal but failed to set out the specific terms upon which the appeal was allowed.
45. The Appellant/Applicant also contends that the Court failed to issue final orders in light of the prayers sought in the Amended Complaint dated 13th September, 2013.
46. The Appellant/Applicant further contends that there is therefore an error apparent on the face of the record and the Court should review its judgement.
47. Section 80 of the *Civil Procedure Act* provides as follows;

“ 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 or made the order, and the Court may make such order thereon as it thinks fit.”

48. Order 45 Rule 1 and 2 of the Civil Procedure Rules provides as follows;

- “(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.”

49. In the judicial decision of *Republic v Public Procurement Administrative Review Board & 2 others* [2018] eKLR the Court held as follows:

“Section 80 gives the power of review and Order 45 sets out the rules. The rules restrict the grounds for review. The rules lay down the jurisdiction and

scope of review limiting it to the following grounds; (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, or (c) for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without unreasonable delay.”

50. As was held in the above cited judicial decision, the Court can only review its orders on the following grounds;

- a. Discovery of new evidence which was not within the knowledge of the Applicant or could not have been produced at the time an order was made or a decree issued.
- b. On account of mistake or error apparent on the face of the record.
- c. For any sufficient reason.

51. The Appellant/Applicant is seeking that this Court reviews its judgement on account of an error apparent on the face of the record.

52. The Court of Appeal in *Muyodi v Industrial and Commercial Development Corporation & Anor* [2006] 1 EA 243 stated thus;

“In *Nyamogo and Nyamogo v Kogo* [2001] EA 174 this Court said that an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by a long drawn process of reasoning or on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the Court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was also possible. Mere error or wrong view is certainly no ground for a review although it may be for an appeal. This laid down principle of law is indeed applicable in the matter before us.” (Emphasis mine)



53. In the judicial decision of Republic v Medical Practitioners & Dentists Board & Another & another; MIO1 on behalf of MIO2 (a Minor) & another (Interested Party); Kingángá (Exparte) (Miscellaneous Civil Application 59 & 63 of 2019 (Consolidated)) [2021] KEHC 298 (KLR) (Judicial Review) (16 November 2021) (Ruling) the Court held as follows;

“In summary, in a civil proceeding, an application for review is entertained only on a ground mentioned in Order 45 Rule 1. A review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. An error apparent on the face of the record exists if of two or more views canvassed on the point it is possible to hold that the controversy can be said to admit of only one of them. If the view adopted by the Court in the original judgment is a possible view having regard to what the record states, it is difficult to hold that there is an error apparent on the face of the record. Review of the earlier order cannot be done unless the Court is satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review.” (Emphasis mine)

54. In the judicial decision of Macharia v Principal Secretary Ministry of Education & another (Environment and Land Judicial Review Case 1 of 2021) [2025] KEELC 877 (KLR) (27 February 2025) (Ruling) the Court held as follows;

“On error apparent on the face of the record, a mistake or an error apparent on the face of the record means a mistake or an error, which is prima-facie visible and does not require any detail examination.” (Emphasis mine)

55. In the above cited judicial decisions, the Court held that an error apparent on the face of the record must be self-evident and must not be established through a process of reasoning.

56. In the present case, the Appellant contends that there is an error apparent on the face of the record for reason that this Court failed to set out the specific terms upon which the appeal was allowed.

57. As was held in Nyamogo and Nyamogo v Kogo [2001] EA 174 an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case.

58. I agree with the Applicant that there is an error on the face of the record. Failure to set out the terms upon which the judgment of the Trial Court is set aside undermines the soundness of the judgment of this Court and as has been explained by the Appellant/Applicant, has resulted in miscarriage of justice. He has not been able to enjoy the fruits of his judgment.

59. It is important to note that in the Memorandum of Appeal dated 23rd August, 2018, the Appellant sought the following orders;

“Reasons wherefore, the Appellant prays that this Honourable Court do set aside the said judgement and decree with costs to the Appellant and makes and any (sic) further orders as maybe (sic) just and expedient.” (Emphasis mine)



60. Paragraph 61 of the judgement delivered on 18th March, 2021, is as follows;

“The end result on my own evaluation of the evidence in totality is that I have no difficulty holding that the learned Trial Magistrate erred in his evaluation of the evidence presented before him wherein he made an erroneous finding and conclusion. I find in favour of the Appellant to the effect that the Appeal herein succeeds. The judgement of the Trial Magistrate’s Court dated the 26th July, 2018 is herein set aside. The Appellant shall have the costs of the appeal.”

61. The Applicant in the memorandum of appeal prayed that this Honourable Court do set aside the said judgement and decree with costs to the Appellant and makes any further orders as may be just and expedient.

62. Upon reading this paragraph, it is not clear what then should happen after the judgment of the Trial Magistrate’s Court dated the 26th July, 2018 is set aside. I concede that this Court in its judgement delivered on 18th March, 2021, after setting aside the judgment of the trial Court ought to have confirmed and/or varied the prayers sought by the Appellant/Applicant in his amended plaint on terms that it deemed just.

63. That being the case, the Appellant/Applicant has succeeded in demonstrating that there is an error apparent on the face of the record. His application for review is merited.

B. Whether an order should be issued directing the Land Registrar, Bomet to cancel the title deed for land parcel No. Kericho/Silibwet/2713.

64. The Appellant/Applicant is seeking that this Court issues an order directing the Land Registrar, Bomet to cancel the title deed for land parcel No. Kericho/Silibwet/2713.

65. It is important to note that judgement in this matter was delivered on 18th March, 2021.

66. At Paragraphs 57-60 of the judgment if this court, it was observed and held as follows:

57. It is trite that once the boundaries are marked , both the land owner and the surveyor are required to sign three copies of the Mutation Form, which are further signed by a more senior surveyor, known as the Licensed Surveyor. The mutation forms, together with the search document, the consent form from the Land Control Board, the PPA1 and the PPA2 forms are then deposited with the district survey office, where a cartographer allocates new plot numbers to the subdivided plots. The same documents are then taken to the respective land county registries to allow the land registrar to register the titles.

58. The term fraud is defined in Black’s Law Dictionary as follows;

“Fraud consists of some deceitful practice or wilful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, it is always positive, intentional. As applied to contracts, it is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other. Fraud, in the sense of a Court of equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another”.

59. From the above captioned definition of fraud, as well as the stated procedure regarding the drawing of mutation to the end result of issuance of the title, I find that the impugned



mutation forms, which formed the basis of the allocation of plot numbers to the subdivided plots and subsequent issuance of titles to parcel No Kericho/Silibwet/2713 were not executed lawfully but were intentionally drawn with a design to obtain some unjust advantage over the deceased. I therefore find that the learned trial Magistrate erred in law and in fact in holding that the deceased was bound by her signatures affixed on the impugned mutation forms notwithstanding the evidence of the eyewitnesses that the Respondent had hived off a different site from the one initially surveyed. (Emphasis mine)

60. I also find that despite there having been sufficient evidence adduced in Court to the effect that the mutation form was not drawn by a person who had visited the suit land but by someone else who had been instructed to finish the work, after the respondent had visited the surveyor's office, which evidence, although circumstantial had been corroborated by eye witnesses, the trial Magistrate had decided to rely on the contents of a mutation form which had been prepared by the purported surveyor who never visited the suit properties, whose credentials were never proved in Court and which Mutation was the bone of contention in the matter.
67. Having found that the Respondent had obtained the title deed for land parcel No. Kericho/Silibwet/2713 fraudulently and/or unlawfully, nothing is easier than to incorporate an order for cancellation of title obtained by the respondent.

C. Who should bear costs of the application?

68. The general rule is that costs shall follow the event in accordance with the provisions of Section 27 of the *Civil Procedure Act* (Cap. 21). A successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise.

Disposition.

69. Taking the foregoing into consideration, I find that the Appellant/Applicant's application dated 20th March, 2025 is merited and in order to correct the error apparent on the face of the record I now order as follows;
- a. The Appeal herein succeeds and the Judgement of the Trial Magistrate's Court dated the 26th July 2018 is hereby set aside.
 - b. Judgment is now entered in favour of the Appellant in the following terms
 - i. A declaration is hereby made that the Defendant (now Respondent) obtained registration of land registration number L.R No. Kericho/ Silibwet/ 2713 fraudulently.
 - ii. The Land Registrar, Bomet shall cancel the title deed for land parcel No. Kericho/ Silibwet /2713 registered in the name of the Defendant (now Respondent).
 - iii. A Permanent Injunction is hereby issued restraining the Defendant (Now Respondent) from using, developing, trespassing, selling and/or howsoever interfering with land registration number L.R No. Kericho/ Silibwet/ 2713.
 - iv. The Plaintiff (Now Appellant) shall have the costs of the suit.
 - c. The Appellant shall have costs of the Appeal.
70. It is so ordered.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 29TH DAY OF
JANUARY, 2026.**

L. A. OMOLLO

JUDGE.

In the presence of: -

Mr. Kipkorir for the Appellant/Appellant

Respondent - Absent

Court Assistant; Mr. Joseph Makori.

