



Muhindi & another v Kimani (Sued in Her Capacity as the Administrator of the Estate of Timothy Kimani Mungai) & another; Wanjohi & 11 others (Intended Interested Party) (Environment and Land Case 87 of 2017) [2026] KEELC 182 (KLR) (20 January 2026) (Ruling)

Neutral citation: [2026] KEELC 182 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE 87 OF 2017**

JG KEMEL, J

JANUARY 20, 2026

BETWEEN

ANTHONY JUSTUS MUHINDI 1ST PLAINTIFF

**ALICE JOYLINE THUGURI (BOTH SUIING IN THEIR CAPACITY
AS THE ADMINISTRATORS OF THE ESTATE OF ELIZABETH
MUMBI) 2ND PLAINTIFF**

AND

**VIRGINIA WANJIKU KIMANI (SUED IN HER CAPACITY AS
THE ADMINISTRATOR OF THE ESTATE OF TIMOTHY KIMANI
MUNGAI) 1ST DEFENDANT**

AWENDO COMPANY LIMITED 2ND DEFENDANT

AND

**EUNICE WAKERA WANJOHI & 11 OTHERS & 11 OTHERS & 11
OTHERS INTENDED INTERESTED PARTY**

RULING

1. What is before me is the applicant's/Interested parties' application dated the 28/8/2025 seeking the following orders;
 - a. The Court to arrest and/or stay the judgment in the main suit, scheduled for delivery on 7/10/25, pending the hearing and determination of the application
 - b. The court to review, vary and/or set aside the proceedings of 16/1/25, 10/3/25, 27/3/25, 6/5/25 and 24/6/25 in the suit, and the matter be reopened for hearing de novo



- c. That the further supplementary bundle of documents annexed hereto be deemed properly filed and served upon payment of the requisite court fees
 - d. That, in the result, the case do proceed for hearing inter parties de novo, and/or the same be reopened for hearing of the interested parties' case.
 - e. Costs of the suit are to be provided for.
2. The application is founded on the grounds annexed thereto and the supporting affidavit of Francis Kariuki Macharia, in which he deposed that, upon application, the suit was reopened for hearing pursuant to the court's ruling of 19/11/24. In compliance with this ruling, the parties filed pleadings dated 2/12/24 within the stipulated 15-day timeframe. However, they failed to pay the throw-away costs due to a misunderstanding of the orders' interpretation - specifically, whether the sum of Kshs 65,000/- was to be paid to each of the Plaintiff and the 1st Interested Party. That the delay in complying with the orders subsequently arose because the applicants raised an additional Kshs 65,000/-, thereby bringing the total to Kshs 130,000/- in throw-away costs payable to the Plaintiff and the 1st Defendant. Despite subsequent compliance, the court's proceedings indicate a lack of compliance with its orders on their part and the matter was scheduled for judgment on 7/10/25. It was averred that the failure to comply with the orders was an inadvertent mistake on the part of the Advocate and should not be attributed to the applicants. Furthermore, the Plaintiff and the 1st Defendant stand to suffer no prejudice if the matter is reopened for hearing. The court was urged to review and set aside the proceedings afforested.
 3. The Plaintiff opposed the application through the Replying Affidavit of Alice Joyline Thunguiru, sworn on 6/10/25. She deponed that the court is now functus officio in dealing with the issues raised in the application. That despite the court having pronounced itself on 16/1/25 on the issue of non-compliance with the orders of 19/11/24, there has been no review or appeal. That the applicants have not demonstrated that they complied with the court's orders, in particular by paying the throw-away costs that had been ordered, hence the said orders ceased to exist by dint of non-compliance. That reopening the case will occasion her great prejudice, noting that this matter was filed a decade ago and has yet to be concluded. That in any event, the applicants are strangers to her claim, in which she elected to sue the current defendants, excluding the applicants, who retain their right to initiate a suit against the 2nd Defendants should they have any claim against them. The court was urged to dismiss the application.
 4. The 1st Respondent opposed the application via the replying affidavit sworn by Virginia Wanjiku Kimani on 9/9/25. She stated that the application is misleading and contains falsehoods, and appears to be designed to obstruct the hearing of the matter by involving non-parties to the suit. Furthermore, the applicants failed to utilise their opportunity to be heard by not complying with the court's orders of 19/10/24. It was also asserted that the delay in resolving the case filed in 2017 is detrimental to the interests of justice, and the court was urged to make such a finding.
 5. The deponent stated that the applicants failed to comply with the orders dated 19/11/24, and the court was urged to proceed and deliver its judgment. It was further averred that the joinder of the applicants is entirely untenable, as the suit pertains solely to the Plaintiff and not to the applicants. The applicants have no basis for joining the suit, given that the Plaintiff did not initially find it necessary to sue them. It was also argued that their defence should constitute a separate suit against the second Defendant, whom they are free to initiate claims against without disrupting the current proceedings. Had the applicants acted in good faith, they would have approached the court as early as 2009, when the suit was filed, and their recent attempt to join this suit appears to be a strategy by the second Defendant to gather additional evidence. Furthermore, the applicants are not parties to the transaction between



the Plaintiff and the 1st Defendant; hence, their claim is purely speculative. Finally, the significant delay in bringing this application disqualifies the applicants from obtaining discretionary reliefs from the court.

6. The 2nd Defendant did not oppose the application.
7. Parties filed written submissions, which I have read and considered.
8. The principal issue pertains to the merit of the application. Specifically, the two primary questions for resolution are: whether the court should review the proceedings of 16/1/25, 10/3/25, 27/3/25, 6/3/25, and 24/6/25, and subsequently vary, set aside the proceedings, and reopen the suit for a de novo hearing; and, if the answer to the aforementioned questions is in the affirmative, whether the supplementary bundle of documents attached should be considered properly filed and served.
9. Before I delve into the issues, allow me to set out the legal regime with respect to review jurisdiction of the court. The legal provision governing this Court's power to review a decision are found in Section 80 of the CPA and amplified by Order 45 Rules 1 & 2 of the CPR that;

80. Review

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.

Application for review of decree or order [Order 45, rule 1.]

(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.

10. For an applicant to succeed in such an application, he must therefore demonstrate the following: 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; On account of some mistake or error apparent on the face of the record or for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without unreasonable delay.

11. In the instant application at hand, a brief background is apt. On 19/11/24, this Court allowed an application or joinder of the applicants on terms;
 - a. The applicants are directed to file their pleadings within the next 15 days; in default, the order shall lapse.
 - b. The applicants shall pay throw away costs in favour of the Plaintiffs and the 1st Defendants in the sum of Kshs 65,000/- within the next 15 days (to be shared equally).
 - c. Thereafter the parties to fix the matter for hearing at the earliest.
 - d. Costs shall be paid by the applicants in favour of the Plaintiffs and the 1st defendant.
 - e. Orders accordingly.
12. From the above orders, it follows that the applicants were required to comply by 3/12/24.
13. On 16/1/25, the matter came up for mention in court, and the applicants' counsel confirmed that the applicants had partially complied with the orders. The pleadings had been filed by 2/12/24, but there was no compliance with the second limb of the orders.
14. On 10/3/25, the file was placed before the Duty Judge, who ordered that it be transmitted to Nairobi for judgment writing, as the judge who had heard and presided over the matter had been transferred to Nairobi.
15. On 27/3/25, the file was still at Thika ELC Court. When the parties appeared before the Deputy Registrar in the absence of the applicants' counsel, the court informed them that the file would be transmitted to Nairobi shortly.
16. There is no evidence on record that this matter was before the court on 6/5/25. However, on 24/6/25, this court reserved judgment for 7/10/25. On 7/10/25, the applicants' lawyer informed the court that the applicants had filed the instant notice of motion, inter alia, seeking to arrest the judgment. The court stayed the judgment and directed the hearing of the application on a priority basis.
17. Undoubtedly, the applicants have not complied with the court orders issued on 19/10/24 regarding the payment of throwaway costs. The reason advanced by the applicants is that the order was ambiguous, hence it took time to interpret its true meaning. The Plaintiffs and the 1st Defendant have denied any consultation on the matter and have urged the court to find that the applicants simply refused to comply with the court orders. That said, there is no evidence adduced by the applicants to show that there was any communication between their counsel and that of the Plaintiffs and/or the 1st Defendant on the matter. Furthermore, if the orders were indeed ambiguous, as the applicants want the court to believe, nothing prevented them from approaching the court to seek clarification. In any event, no evidence was adduced to show that the applicants have complied at all, albeit even late, the alleged ambiguity notwithstanding.
18. Considering the circumstances of the application and applying the guidelines that direct the court in the review of its decisions, I determine that there is no substantial evidence presented before the court to substantiate the following: the discovery of new and significant matter or evidence which, after exercising due diligence; mistake or apparent error on the face of the record, or for any other sufficient reason.



19. To further emphasise this point, my understanding of the review rules cited above does not include non-compliance with court orders. I must assert that the delay in submitting the application was approximately nine months, a period that has not been satisfactorily explained. It is noteworthy that the court permitted only fifteen days for compliance, while observing that the other parties had concluded the adduction of their testimonies and were awaiting the determination of the dispute as well as the apparent age of the matter. Given the nine-month delay in filing the review application despite non-compliance with court orders, I believe this disqualifies the applicants from the discretionary reliefs they seek.
20. Should the court set aside its proceedings aforesaid? The provisions of law with regards to setting aside orders are to be found under Order 12 Rule 7 of the Civil Procedure Rules provides: -
- “Where under this Order or judgment has been entered or the suit has been dismissed, the court, on application, may set aside or vary the judgment or order upon such terms as may be just.”
21. Further, the provision is buttressed by Order 51 Rule 15 of the Civil Procedure Rules which provides: -
- “The court may set aside an order made ex parte”
22. In this instance, the applicants have petitioned the court to annul the proceedings. The Civil Procedure Act does not provide for the annulment of proceedings; rather, it permits a stay of such proceedings. Even if the court were to consider the applicable rules for setting aside orders, such as the order to transmit the case file to the Judge for judgment writing and the order to reserve a date for judgment, issued on 10/3/25 and 24/6/25, respectively, the filing of the application approximately nine months later, as previously highlighted, is, in my view, inordinate. Furthermore, the applicants have failed to present any justification warranting the setting aside of such orders, which were, in my view, merely directional and procedural. I have already found that the orders issued on 19/11/24 lapsed on the 16th day thereof due to non-compliance. Accordingly, there are no orders reinstating the orders issued on 19/11/24. Consequently, there are no grounds to set aside the said proceedings or orders. Additionally, the court halted the delivery of judgment to enable it to determine the instant application. At the very least, therefore, I hold the view that the proceedings cited for setting aside are now moot.
23. Given that the matter has been before the court for the past decade and that the applicants have been afforded the opportunity to be heard, except for their failure to comply with the court's orders, I conclude that the interests of justice do not warrant any further delay in delivering judgment in this case.
24. For the foregoing reasons, I find that the application is not merited. It is dismissed with costs to the parties, except for the 2nd Defendant.
25. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF JANUARY 2026 THROUGH MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered in the presence of;

Ms Wanjiru HB Kimani for the Plaintiff



N/A for the 1st Respondent

Mr Githinji HB for Ms Kemunto for the 2nd Defendant

C/A – Ms Yvette Njoroge

