



**Mwanjema (Suing as the Legal Representative of the Estate of Abdalla Ali Mwamuema (Deceased)) v Land Registrar Kwale & 10 others (Environment and Land Case E059 of 2025) [2026] KEELC 128 (KLR) (20 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 128 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KWALE**  
**ENVIRONMENT AND LAND CASE E059 OF 2025**  
**LL NAIKUNI, J**  
**JANUARY 20, 2026**

**BETWEEN**

**FATUMA ABDALLA MWANJEMA (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF ABDALLA ALI MWAMUEMA (DECEASED)) ... PLAINTIFF**

**AND**

**THE LAND REGISTRAR KWALE ..... 1<sup>ST</sup> DEFENDANT**  
**THE CHIEF LAND ADJUDICATION & SETTLEMENT OFFICER ..... 2<sup>ND</sup> DEFENDANT**  
**THE ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**  
**AMARA LIMITED ..... 4<sup>TH</sup> DEFENDANT**  
**JOHN MBUU ..... 5<sup>TH</sup> DEFENDANT**  
**JOSEPH NGURU ..... 6<sup>TH</sup> DEFENDANT**  
**TOBIAS DAVID ..... 7<sup>TH</sup> DEFENDANT**  
**GEORGE NGURE KARIUKI ..... 8<sup>TH</sup> DEFENDANT**  
**JOY WANGARI NGURU ..... 9<sup>TH</sup> DEFENDANT**  
**FRANCIS OWINO RAO ..... 10<sup>TH</sup> DEFENDANT**  
**FIDELIS WANJIKU NDUNGU ..... 11<sup>TH</sup> DEFENDANT**



## RULING

### I. Introduction

1. The Honourable Court was called upon to make a determination unto the instant Notice of Motion application dated 26<sup>th</sup> November 2025 filed by the 11<sup>th</sup> & 12<sup>th</sup> Defendants/Applicants herein. The application was brought before court pursuant to the provisions of Sections 1A,1B and 3A of the Civil Procedure Act, Cap. 21, Order 45 Rule 1 of the Civil Procedure Rules 2010 and any other enabling provisions of the law.
2. Upon service, the application was opposed vide grounds of opposition dated 17<sup>th</sup> December 2025 by the Plaintiff/Respondent. Subsequently, the said application was further opposed through Replying Affidavit sworn and whose contents the court will layout later in the ruling.

### II. The application by the 11<sup>th</sup> & 12<sup>th</sup> Defendants/Applicants.

3. The 11<sup>th</sup> & 12<sup>th</sup> Defendants/Applicants sought for the following orders:-
  - a. Spent.
  - b. That the order of this Honourable Court dated 30<sup>th</sup> June 2025, directing all parties to maintain the status quo on the suit land be reviewed, suspended and/or varied so as to permit the 11<sup>th</sup> Defendant to complete specified essential construction works on LR. Nos. Kwale/Diani/963 and 964 by the Applicants
  - c. That specifically, the above named Defendant be permitted, under strict judicial supervision and within a limited time frame to complete the following works; waterproofing and finishing of Villa 2, stabilization and backfilling of excavated foundations on Villa 3 and Gym; installation of necessary drainage and environmental protective measures and implementation of site safety and security protocols
  - d. Costs of this application in the cause.
4. The application was premised under the grounds, testimonial facts and the averment made by Fidelis Wanjiku Ndungu the 11<sup>th</sup> Defendant. She averred that:-
  - a. She had been in possession of the suit property from the year 2011 when she erected a perimeter wall thereon and had had a caretaker on it since then.
  - b. She commenced construction of 3 Villas and a gymnasium on the properties and by the time the pleadings were served upon her.
  - c. She had already taken possession of one villa which was complete while the rest of the developments was at different stages of development.
  - d. On 30<sup>th</sup> June 2025, the Honourable Court had issued status quo orders at a time when the construction works on the developments had materially progressed.
  - e. The Contractor engaged in doing the work being Achilles Construction Company Limited had provided a report detailing the severe consequences of halting the construction.



- f. At paragraph 7 of the affidavit, the deponent stated that the cessation of the works would lead to significant structural damage through water ingress and erosion creating a safety and health hazard and substantial loss.
- g. The reliefs sought was tailored to allow the completion of the essential protective measures under strict judicial supervision to avoid any prejudice to the parties.
- h. It was further stated that the Plaintiff had not provided any security for costs to mitigate losses in the circumstances.
- i. The court was asked to vacate the status quo orders in order to protect and preserve the property.

### **III. Response to the application dated 26<sup>th</sup> November 2025**

- 5. In opposing the application, the Plaintiff/Respondent filed Grounds of Opposition dated 17<sup>th</sup> December 2025 and a Replying Affidavit by the Plaintiff urging court to disallow the application. The grounds of opposition raised the following issues that:-
  - 1. the Application by the 12<sup>th</sup> Defendant seeking review, suspension and/or variation of the status quo orders issued on 30<sup>th</sup> June 2025 lacks merit and is misconceived, incompetent, and an abuse of the Court process.
    - a. The said Application failed to meet the mandatory threshold for review or variation under the provision of Order 45 Rule 1 of the Civil Procedure Rules, 2010, no new and important matter, error apparent on the face of the record, or other sufficient reason having been disclosed.
    - b. The grounds advanced by the 12<sup>th</sup> Defendant, namely alleged financial loss, inconvenience, exposure of incomplete structures, and contractor-related risks—did not in law constitute sufficient reason to warrant the setting aside, review, or variation of a valid and subsisting status quo order.
    - c. The financial loss, construction inconvenience, or incomplete development undertaken at the Applicant’s own risk are not compelling grounds for vacating or varying preservative orders issued to protect disputed land pending determination of rights.
    - d. The status quo orders issued on 30<sup>th</sup> June 2025 were clear, unequivocal, and expressly intended to preserve the substratum of the suit, and any variation permitting continued construction would defeat the very purpose of the said orders.
    - e. Allowing the 12<sup>th</sup> Defendant to proceed with “completion works”, however described, would amount to sanctioning further development, alter the character of the suit land, and risk rendering the suit nugatory.
    - f. The alleged hardship relied upon by the 12<sup>th</sup> Defendant was self - inflicted, having arisen from developments undertaken on land whose ownership and sub - divisions was the subject of serious dispute before this Honourable Court.
    - g. The Contractor’s report relied upon was self - serving, prepared by an interested third party, and could not override or displace express court orders issued for the preservation of disputed property.



- h. The invocation of the overriding objective and the interests of justice could not be used to legitimize contested possession or advance private commercial interests at the expense of preserving disputed land pending judicial determination.
- i. The balance of convenience and the interests of justice overwhelmingly favour maintenance of the status quo until the application and the main suit was heard and determined.
- j. The Application was an attempt to steal a march on the Plaintiff and to create irreversible equities through continued construction, contrary to established principles of law and equity.
- k. Therefore the Application should be dismissed with costs.

#### **IV. The Replying Affidavit**

6. The Plaintiff/Applicant/Respondent, Fatuma Abdalla Mwamjema swore an affidavit opposing the application and stated that on 30<sup>th</sup> June 2025, this Honourable Court issued clear and unequivocal orders directing all parties to maintain the status quo on the suit land pending inter partes hearing.
- a. at the time the said orders were issued, the alleged constructions on the suit land were at an early and incomplete stage, contrary to the impression created in the Supporting Affidavit of the 11<sup>th</sup> Defendant.
  - b. the 11<sup>th</sup> Defendant, through her agents and contractor, was duly served with the pleadings and the Court orders on 7<sup>th</sup> July, 2025, and the contractor accepted service on behalf of the 11<sup>th</sup> Defendant.
  - c. despite full knowledge of the subsisting Court orders, the 11<sup>th</sup> Defendant wilfully continued with construction works on the suit land in blatant disregard of the authority of this Honourable Court.
  - d. the continued construction after service was deliberate, calculated, and intended to create faits accomplis, manufacture hardship, and gain an unfair advantage in the pending proceedings.
  - e. the alleged risks now cited, structural damage, water ingress, and financial loss was self-inflicted and arise solely from the Defendants' disobedience of Court orders, and cannot be a lawful basis for seeking equitable relief.
  - f. the contractor's report annexed to the Application was self-serving, prepared after violation of Court orders, and is intended to sanitize unlawful conduct rather than preserve the suit property.
  - g. permitting the completion of "essential works", including waterproofing or finishing, would amount to continuation of development, alter the character of the suit land, and defeat the very purpose of the status quo orders.
  - h. this Honourable Court should not exercise its discretion in favour of a party who had approached the Court with unclean hands and in open defiance of its orders.
  - i. strictly on a without prejudice basis and without conceding to the Application and only in the event that this Honourable Court was minded to permit any limited intervention, the Plaintiff prayed that such intervention be confined strictly to:



- i. Non - invasive safety measures only, limited to; covering exposed foundations, erosion and drainage control and fencing and site safety measures.
- ii. No finishing works, no waterproofing, no structural additions, no occupation, and no further development whatsoever.
- iii. All permitted measures to be undertaken under the supervision of a Court appointed officer or County Engineer.
- iv. The 12<sup>th</sup> Defendant to provide a binding undertaking as to damages.
- v. A joint photographic, video, and survey record of the site to be taken before and after any such limited measures, filed in Court.

## V. Submissions

7. From the Court file record, no orders were made as to the filing of submissions by the parties in canvassing the application. The court would therefore proceed to render its ruling as guided by the pleadings on record.

## VI. Discussions and determination

8. I have carefully read and considered the pleadings herein by the Applicants from the Notice of Motion application, the grounds raised in opposition and the affidavit opposing the same. I have further considered the relevant provisions of *the Constitution* of Kenya, 2010 and statutes.
9. In order to arrive at an informed, just, equitable and reasonable decision, the Honourable Court has framed the following three (3) issues for its determination: -
  - a. Whether the application meets the threshold of review of Court Orders.
  - b. Whether the application dated 26<sup>th</sup> November 2025 Applicant had made case for review of the status quo orders issued on 30<sup>th</sup> June 2025
  - c. Who bears the costs of the instant application?

### Issue No. a). Whether the application meets the threshold of review of Court Orders.

10. Under this Sub – heading the Honourable Court will briefly examine the parameters with regard to the substratum of a review of a Court Order. The application by the Applicant was brought under the provisions of Section 80 (a) of the *Civil Procedure Act*, Cap. 21 (Hereinafter referred to as “The Act”) and Order 45 (1) (1) (a) of Civil Procedure Rules, 2010 (Hereinafter referred to as “The Rules”). A clear reading of these provisions indicates that Section 80 is on the power to do so while Order 45 sets out the rules on doing it.
11. The provision of Section 80 of the 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.”

12. While the provision of Order 45 Rule 1 of the provides as follows: -

“ 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.”

13. Briefly, and prior to proceeding further, for ease of reference, the Honourable Court wishes to extrapolate on a few case law on this subject matter. In the case of:- “Republic – Versus - Public Procurement Administrative Review Board & 2 others [2018] eKLR” it was held:

“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.”

14. Additionally, in the case of “Sarder Mohamed – Versus - Charan Singh Nand Sing and Another (1959) EA 793” where the High Court held that Section 80 of the Act conferred an unfettered discretion in the Court to make such order as it thinks fit on review and that the omission of any qualifying words in the Section was deliberate. Broadly speaking, in the case of “Republic – Versus - Public Procurement Administrative Review Board & 2 others [2018] eKLR” it was held: -

“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.”

15. From the stated provisions, it is quite clear that the powers to cause any review, variation or setting aside a Court’s decision are discretionary in nature. Thus, the unfettered discretion must be exercised judiciously, not capriciously and reasonably. To qualify for being granted the orders for review, varying and/or setting aside a Court order under the above provisions to be fulfilled, the following ingredients, jurisdiction and scope are required.
- a. There should be a person who considers himself aggrieved by a Decree or order;
  - b. The Decree or Order from which an appeal is allowed but from which no appeal has been preferred;
  - c. A decree or order from which no appeal is allowed by this Act;
  - d. There is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge or could not be produced by him at the time when the decree was passed or the order made; or
  - e. 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.
  - f. The review is by the Court which passed the decree or made the order without unreasonable delay.
16. This Honourable Court on the said subject matter has previously stated in in the case of “Sese (Suing as the Administrator of the Estate of the Late Shali Sese) – Versus - Karezi & 8 others (Environment and Land Constitutional Petition 32 of 2020) [2023] KEELC 17427 (KLR)” where it held thus:-

“The power of review is available only when there is an error apparent on the face of the record. Indeed, this Court emphasizes that a review is not an appeal. The review must be confined to error apparent on the face of the record and re – appraisal of the entire evidence or how the Judge applied or interpreted the law would amount to exercise of Appellate Jurisdiction, which is permissible.”

**Issue No. b). Whether the Applicant had made case for review of the status quo orders issued on 30<sup>th</sup> June 2025.**

17. Under the sub – title the Honourable Court will be assessing whether the above stated legal principles on review of Court order are applicable and hence meritorious to the instant application. In so doing and for purposes of this ruling, I will reconceptualise the contents of the facts leading to the application. The Plaintiff/Applicant approached this court initially vide an application dated 27<sup>th</sup> June 2025 in her capacity as the duly Legal Administrator of the estate of the deceased Abdalla Ali Mwamuema. The Applicant sought for inhibition orders stopping any further dealings on the suit properties herein pending hearing and determination of the suit.
18. Going by the Plaint instituting the suit and which accompanied the Applicant’s application, it is her case that the suit properties were a sub - division of the property Kwale/Diani/215 currently occupied by her and the subdivision was fraudulent as it was without her knowledge and consent. The Applicant sought for cancellation of the titles emanating from the alleged fraudulent sub - division.



19. The 12<sup>th</sup> Defendant on the other hand and who has filed the application subject of this ruling maintains that the suit properties emanating from the sub - divisions belongs to her and she had proceeded to make developments thereon.
20. The court after considering the application of 27<sup>th</sup> June 2025 opted to grant status quo orders pending determination of the application for orders of inhibition. The 12<sup>th</sup> Defendant/Applicant aggrieved by the same seeks to have a review of the orders sighting advanced construction works on her parcel that have stopped and are bound to cause substantial loss if not completed.
21. While discussing the import of review orders, the Honourable Court of Appeal decision in “Accredo Ag & 3 Others – Versus - Steffano Uccelli & Another (2017) eKLR, held that:-  

“The aggrieved person instituting a review must satisfy the court that: a) There has been 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 b) There is some mistake or error apparent on the face of the record, or c) There exists sufficient reason to review the decree/order.”
22. I have considered the reasons advanced by the Applicant seeking the review orders herein. it is indeed new evidence to the court that the constructions on her property had advanced to include the 3 Villas and the Gymnasium. According to the report by Achilles construction company limited and which is being relied upon by the Applicant, the 1<sup>st</sup> Villa is completed, the 2<sup>nd</sup> Villa is undergoing water proofing and the 3<sup>rd</sup> Villa and Gymnasium await commencement of construction as the foundation has already been excavated.
23. Initially and from the application leading to the status quo orders, the court was aware that there had been subdivisions and activities on the properties, however the nature and extent of the same had not been further elaborated. What informed the court in granting the status quo orders was the fact that several parties were competing over ownership of the suit properties and the court cannot at an interlocutory stage make orders as to who the lawful proprietor is. The court was thus interested in preserving and protecting the suit property as was guided by the holding in the case of: - “TSS Spinning & Weaving; Company Limited – Versus - NIC Bank Limited & another [2020] eKLR”, the unpacked the purpose of a status quo order as follows: -  

“In essence therefore, a status quo order is meant to preserve the subject matter as it is/existed, as at the day of making the order. Status quo is about a court of law maintaining the situation or the subject matter of the dispute or the state of affairs as they existed before the mischief crept in, pending the determination of the issue in contention.’
24. However, with the new facts at hand, the court realises that it cannot at this point be able to tell whatever orders will be made upon conclusion of the matter after evidence has been tendered. Perhaps the applicant might defend her title successfully or the applicant. Either way, it is important to preserve the property and the developments thereon given that a colossal amount has been used to this point in making the developments. The court has carefully interrogated the report by the construction company and has noted the impacts highlighted therein arising from cessation of the construction works. It includes the structural impacts, the health and safety impacts and lastly the environmental impacts.
25. In the interest of justice, it will be proper to preserve what had already been put up. In granting the specific preservation orders, the court will be guided by the provisions of Section 3A provides for the



inherent powers of the court and states that nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

26. However, this does not mean that the 11<sup>th</sup> defendant has an upper hand in the litigation but rather cushioning either of the parties from the vicissitudes that might arise from the litigation.
27. I also wish to point out that the court will not rely fully on the report and might need to have a site visit in order to get a proper understanding of what is at stake and the current situation on the ground. Perhaps it is after this visit that the court can issue further orders if and when necessary. For the foregoing reasons it is this court's findings that the instant application partly succeeds.

#### **Issue No. b). Who bears the costs of the instant application?**

28. It is trite that costs are at the discretion of the Court. Costs mean the award that a party is granted at the conclusion of the legal action or proceedings. The Proviso of Section 27 of the Civil Procedure Act, Cap. 21 holds that costs follow an event. By an event it means the outcome or result of the legal action or proceedings thereof.
29. However, the circumstances of this case have led the court in believing that it will be in the interest of justice, equity and conscience to have each party bear its own costs.

#### **VII. Conclusion & Disposition**

30. Consequently, having caused an in-depth analysis to the framed issue herein, the Honourable Court based on the principles of Preponderance of Probabilities and the balance of convenience proceeds to grant the following orders: -
  - a. That the Notice of Motion application dated 26<sup>th</sup> November 2025 be and is hereby allowed upon the fulfilment of the following Pre – Conditions herein as stated below:-
    - i. There shall be covering of the exposed foundations that had been excavated for construction of the 3<sup>rd</sup> Villa and the Gymnasium. The incomplete 2<sup>nd</sup> Villa to be covered for protection from any harsh conditions as indicated in the report.
    - ii. There shall be stringent safety pre – cautionary measures undertaken by the Applicant on the site. These will include fencing off the construction area using high dust hoards to prevent the public from any environmental nuisance and pollution or falling of debris. The Costs of the exercise to be borne by the Applicant herein.
    - iii. There shall be no structural additions or further constructions on all the properties or waterproofing as suggested by the Applicant pending a site visit by the court.
    - iv. The works in order [1] one to be undertaken WITHIN A 5 - DAY period or less under the supervision of the ELC Court Administrator Kwale; an officer from the National Construction Authority, an officer from the County Government of Kwale and lastly NEMA and in the presence of the parties herein. [Summons to the relevant officers for the exercise to be issued through court].
  - b. That there be a site visit to be conducted by this court on 27<sup>th</sup> February, 2026 pursuant to the provision of Order 18 Rule 11 of the Civil Procedure Rules, 2010. Parties shall make arrangement for the provision of security for Court. The matter shall be mentioned 12<sup>th</sup> February, 2026 to confirm this plans.



c. That each party to bear its own costs.

It is ordered accordingly.

**RULING DELIVERED THROUGH THE MICRO – SOFT TEAMS VIRTUAL MEANS, SIGNED  
AND DATED AT KWALE THIS 20<sup>TH</sup> DAY OF JANUARY 2026.**

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**HON. MR. JUSTICE L.L NAIKUNI,  
ENVIRONMENT & LAND COURT  
AT  
KWALE.**

Ruling delivered in the presence of: -

Mr. Daniel Disii, the Court Assistant.

M/s Ithondeka Advocate for the 11<sup>th</sup> & 12<sup>th</sup> Defendants/Applicants.

Mr. Oliech Advocate for the Plaintiff/Respondent.

