

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
KITALE
ELC NO. 107 OF 2017

MARGARET **NABUIN**
LOMATONG-----PLAINTIFF/APPLICANT

VERSUS

SLYVIA **ABEI** **KOSIAE-----1ST**
DEFENDANT/RESPONDENT

JACKSON **EKIRU** **KOSIAE-----2ND**
DEFENDANT/RESPONDENT

RULING

- 1.** By an application dated **6/11/2025**, the plaintiff seeks for review of the judgment by this court delivered on **23/7/2025**, on account of errors or mistakes on its face that the defendants vacates the suit land while at the same time holding that the 2nd defendant is not to vacate the portion that belongs to his family, and that the 2nd defendant is not the son of the plaintiff's family but of the 1st defendant.
- 2.** In the supporting affidavit sworn by Carolyn Mafutu, advocate, on **6/11/2025**, it is deposed that though the plaintiff and her witnesses testified in this matter, their evidence was not rebutted by the defendants as to their claim. Learned deponent

says that paragraph **52** of the judgment has an error to the extent that the 2nd defendant is indicated as the son of the family of Lomatong, when the true position is that the 2nd defendant is the son of the 1st defendant.

- 3.** Learned deponent further deposes that in the said judgment, the court proceeded to acknowledge the fact that the defendants failed to prove their rights on the suit land, that they have no right to remain on the land, which contravenes its earlier directions, and proceeded to hold that the 2nd defendant should not vacate the land.
- 4.** Learned deponent states that the error is further demonstrated by the fact that the court proceeded to order that the party vacate the land, accordingly, when it is not clear from the face of the record on which party should vacate the land. The deponent states that unless the foregoing errors are corrected, it is not possible to extract a decree capable of being executed, for the decree holders to enjoy the fruits of their judgment.
- 5. Order 45** of the Civil Procedure Rules, as read together with **Section 80** of the Civil Procedure Act, grants this court power to review its orders or judgment where there is no pending appeal, based

on inter alia, error or mistake on the face of the record.

6. In **Nyamongo & Nyamongo -vs- Kogo [2001] 1 EA 173**, the court defined an error apparent on the face of the record as one that stares the court in the face, about which there could be possibly no two opinions about it. The court said that such an error does not require a long drawn process of reasoning.
7. In **National Bank of Kenya Limited -vs- Ndugu Njau Civil Appeal No. 211 of 1998**, the court emphasized that the error or mistake must be self-evident and should not require an elaborate argument to establish it. The court said that misconstruing a statute or other provisions of law, and or the incorrect exposition of the law, cannot be a ground for review but a ground of appeal.
8. In **Republic -vs- Advocates Disciplinary Tribunal Exparte Appollo Mboya [2019] eKLR**, the court held that an error apparent on the face of the record is one which is, *prima facie*, visible and does not require any detailed examination.
9. In **Mbugua & another (Suing as the Administrators of the Estate of Joseph Kiarie Mbugua & another) -vs- Timber Manufacturers & Dealers Limited (Civil Application E019 of 2023) [2023] KESC 86 (KLR) (6 October 2023)**

(Ruling) the court cited the **Fredrick Otieno Outa -vs- Jared Odoyo Okello, Independent Electoral and Boundaries Commission, Returning Officer, Nyando Constituency & ODM Party (Petition 6 of 2017; [2017] KESC 25 (KLR))**, that, by its nature, the slip rule permits a court of law to correct its errors that are apparent on the face of the record, which are so obvious that their correction cannot generate any controversy regarding the judgment or decision of the court.

10. The court held that such errors must be of such a nature that their correction would not change the substance of the judgment or alter the clear intention of the court. The court said that the slip rule does not confer upon a court any jurisdiction or powers to sit on appeal of its own judgment or to review the judgment extensively, or to substantively alter it.

11. In **Hussein Khalid & Others -vs- Attorney General & Others SC Appl. No. 32 of 2019**, the court held that the power of review is exercised sparingly since once a judgment is delivered, litigation has to come to an end, there is a need for finality in court decisions, the court becomes *functus officio*, and that review should not alter the decision sought to be reviewed except in deserving

cases. The court cited International **Estate Ltd & Others -vs- Francis & Others [2014] LPELR 22314 (SC)**, that an application for review is not meant to allow a losing party to re-litigate or re-open a matter merely because such party is unhappy with the outcome.

12. In **William Musembi & Others -vs- Moi Education Centre Co. Ltd & Others Appl. No. E019 of 2021**, the court said that while it can correct errors arising from any accidental slips or omissions, or vary the judgment to give effect to its intention, or to steer a judgment, ruling or order towards logical or clerical perfection, the error must relate to an oversight or clerical error of computation, for the ends of justice to be met, or to prevent abuse of the process of the court. See **Karanja -vs- Murigi Civil Appeal No. 68 of 2019 [2025] KECA 517 [KLR] (21st March 2025) (Judgment)**.

13. Applying the foregoing case law to the instant application, the alleged error apparent on the face of the record or mistake is alleged to be in paragraph **52** of the judgment delivered on **23/7/2025**.

- 14.** The deponent says that due to the error, the decree holder is unable to extract a decree so as to execute it and enjoy the fruits of the judgment.
- 15.** It is trite law that parties are bound by their pleadings. In the plaint that was before the court, the plaintiff had sought declaratory orders that the plaintiff is the sole owner of **20 Ha** of land comprised in the Lomatong family within Lodwar, with the 1st and 2nd defendants having no proprietary rights over it, and began to be forcefully evicted therefrom. Prayer No. **2** specifically required the 1st and 2nd defendants move out of the family land.
- 16.** In the statement of defence dated **20/3/2018**, opposing the suit, the 1st and 2nd defendants averred that the plaintiff had no *locus standi* to bring the suit without letters of administration, she could not bring the suit on behalf of the Lomatong family, and that they hold a beneficial interest in the land.
- 17.** In a reply to the defence dated **29/3/2018**, the plaintiff insisted that the land was exclusively hers and that she has *locus standi* to prosecute the suit. The judgment delivered by this court was based on issues arising from the foregoing pleadings and the evidence tendered to support those issues. The

bottom line of the decision is that the plaintiff's suit was found lacking merits. The applicant, however, through this application, thinks the suit was allowed, only that the judgment has errors.

18. In the written submissions dated **21/11/2025**, the error is said to exist on paragraph **52** line **7** to **11, 11-14** of the judgment, and that the alleged blood relationship was not pleaded in the plaint dated **19/6/2017**. The plaintiff invokes **Section 99** of the Civil Procedure Act, and relies on **Republic -vs- Attorney General & Others Exparte Kenya Seed Co. Ltd & Others [2010] eKLR, Newton Yandal Operations Pty vs The J Aron Corp & Goldman Sachs Group Inc [2007] 70 NSWLR 411** and **Lakhamshi Brothers Ltd -vs- R. Raja & Sons [1966] EA 313**, on the application of slip rule.

19. As a starting point, the court, in arriving at the judgment, relied on the pleadings on record and the evidence tendered by the parties. The court in paragraphs **35-37** of the judgment made a specific finding that the suit land was communal or ancestral land as per the definition of **Article 63 2(d)** of the Constitution, as read with **Section 12** of the Community Land Act, hence could not be

individually declared to belong to the plaintiff as an individual.

- 20.** At paragraph **43** of the judgment, the court made a finding that simply because the defendants did not testify, the onus remained with the plaintiff to prove her case under **Section 107** of the Evidence Act.
- 21.** Further, in paragraph **46** of the judgment, the court made a finding that the suit land belongs to the Kanamkemer clan, which includes the Lomatong family, to which the plaintiff belongs.
- 22.** Paragraphs **46 - 47** of the judgment, the last line has a specific finding that the land belongs to the family and not to a specific individual member, to the exclusion of the entire community under **Article 63 2(d) (i) and (ii)** of the Constitution. In paragraph **48**, the court held the suit property as held in trust by the Kanamkemer clan, such that the defendants are not to interfere with the suit property until the adjudication process is finalized.
- 23.** Guided by **Section 27(3)** of the Community Land Act, the court ruled that an individual entitlement under subsection (1) was not permissible in law to be superior to community land title in any way. The court, based on the plaint and its reliefs, held that it could not hold and or decree the land to the plaintiff.

24. Paragraph 52 of the judgment, therefore, was a conclusion that the plaintiff's claim to be declared the sole owner of the suit land had failed since the land was community land.
25. Unfortunately, the plaintiff, while reading the judgment upside down, wants the court to believe that there are apparent errors and or contradictions such that she cannot enjoy the fruits of her judgment by extracting a decree. That is far from the truth. The court made a finding that the suit, as presented and based on the evidence tendered by the plaintiff, was unsuccessful. The court, after finding the suit unmerited, did not grant the rest of the prayers.
26. A good ground of appeal may not necessarily be a good ground for review, as held in **Standard Chartered Financial Services Limited v Manchester Outfitters (Suiting Division) Limited, Now Called King Woolen Mills Limited & 2 others [2025] KESC 39 (KLR)**. An application for review must be made without inordinate delay. It took the applicant more than four months to file the application.

27. The court finds no error apparent on the face of the record or mistake to disturb the judgment dated **23/7/2025**. The application is dismissed with no orders as to costs.

28. Orders accordingly.

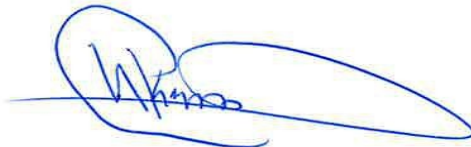
Ruling dated, signed, and delivered via **Microsoft Teams/Open Court** at **Kitale** on this **4th** day of **February 2026**.

In the presence of:

Court Assistant - Dennis

Miss Mufutu for Oduor for the applicant present

Ekusii for the respondents absent



**HON. C.K. NZILI
JUDGE, ELC KITALE.**