



Mukhwana v Sawenja & another (Environment and Land Case 60 of 2019) [2026] KEELC 467 (KLR) (4 February 2026) (Ruling)

Neutral citation: [2026] KEELC 467 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT AND LAND CASE 60 OF 2019**

CK NZILI, J

FEBRUARY 4, 2026

BETWEEN

JOYCE SIUNDU MUKHWANA PLAINTIFF

AND

PROTUS SAWENJA 1ST DEFENDANT

JOHN WALOKI SAWENJA 2ND DEFENDANT

RULING

1. Before the court is an application dated 6/11/2025. The defendants, as judgment debtors, are seeking review of the judgment delivered on 24/9/2025. The application is based on the grounds on its face and in a supporting affidavit sworn on 6/11/2025, by Protus Sawenja.
2. The application is opposed through the affidavit of Joyce Mukhwana, the plaintiff, sworn on 17/11/2025. The plaintiff, as the decree holder, reiterates that land parcel No. Kiminini/Kiminini Block 8/Birunda Farm/341 and 342 were a subdivision of plot No. 1 in L.R. No. 721, going by her exhibits during the hearing produced as P. Exhibit No. 2A, 2B, and 5 that were not challenged by the defendants/applicant at the hearing.
3. The deponent states that those facts in her exhibits as to subdivisions were actually admitted by the applicants in their statement of defence and counterclaim dated 16/10/2019, by pleading that the said parcels of land formed part of plot No. 1 in L.R. No. 7121.
4. The respondent deposes that the applicants' annexures marked PS-(1) and (2) are false documents, intended to mislead the court, which, as a matter of fact, fall within L.R. No. 7121 and not L.R. No. 7122 as alleged by the applicants.



5. The respondent deposes that the ruling in Kitale ELC No. 71 of 2019 was delivered on 12/3/2024, and is not relevant to the issues in this case; otherwise, it is unclear why the applicants, who testified before this court on 18/7/2025, did not produce that evidence.
6. Further, the respondent deposes that upon delivery of the judgment, the applicants filed a notice of appeal and sought the typed proceeding, as per annexures marked JM(2A) and (2B). The respondent deposes that an application for review is misconceived and cannot be entertained in the circumstances of this matter.
7. A party who is aggrieved by an order or decree where he has not appealed against the order or decree from the court that passed the order or decree by dint of Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules, may apply for review.
8. The grounds for review include inter alia, discovery of new and important matter or evidence which, after 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, or further grounds is on account of some mistake or error apparent on the face of the record. Additionally, is when there is any other sufficient reason. The application must be made without unreasonable delay.
9. Once a party exercises the right of appeal, the option for review is not available. In Serephen Nyasani Menge -vs- Rispah Onsase [2018] eKLR, the court held that a party cannot apply for review and at the same time appeal against the same decree or order.
10. In this application, the grounds relied upon are the discovery of new and important evidence on the face of the record, mistake or error apparent, warranting review.
11. In Karanja -vs- Murigi Civil Appeal No. 68 of 2019 [2025] KECA 517 [KLR] (21st March 2025) (Judgment), the court held that under these provisions, the court may review its orders where it is satisfied of one of the three grounds. On discovery of evidence, the court said such evidence must be credible material to the case, and not merely confirmatory. See Francis Origo & another -vs- Jacob Kumali Mungala [2005] eKLR.
12. As to an error apparent on the face of the record, in Nyamogo & Nyamogo Advocates -vs- Kogo [2001] eKLR, said that the errors must be self-evident, not requiring extensive argument to establish.
13. In Rose Kaiza -vs- Angelo Mpanju Kaiza [2009] eKLR, the court held that an application for review based on alleged new evidence must be treated with caution and the court must be satisfied that the materials placed before it, in accordance with the formalities of the law, do prove the existence of the facts alleged. The court said that it must be shown that the applicant acted with due diligence, and the existence of the evidence was not within his knowledge. The court said that it is not only the discovery of the new and important evidence that entitles a party to apply for review, but the discovery of the same, which was not within the knowledge of the party when the decree was made.
14. Applying the foregoing case law to the instant application, have the applicants met the test? First and foremost, times without number, courts have emphasized the need to comply with procedural rules at the filing of a suit and before the same is set down for hearing during a case conference.
15. The court record shows that PW1 took the witness stand on 22/9/2021, following confirmation of the matter as ripe for hearing. The witness was stood down to comply with Order 11 of the Civil Procedure Rules, before hearing on 15/10/2021. The defendants cross-examined the witness on 18/10/2021 and marked several defence exhibits for identification.



16. PW2, 3, and 4 took the witness stand on 7/12/2021, while PW5 testified on 31/1/2022. PW3 was recalled on 21/2/2022. PW6, as the Land Registrar testified on 17/3/2022, in relation to the three disputed parcels of land, and mentioned a related Petition No. 71 of 2019.
17. At that juncture, the court stayed this suit until the petition was delivered. An application dated 23/3/2022 was filed, and parties were ordered to attend court for defying an order. On 4/2/2025, parties by consent agreed that the matter proceed from where it had reached.
18. Mildred Chesoni, a Senior Chief, testified as PW8, together with Dickson Agoi, Assistant County Commissioner. DW1 and DW2 testified and produced D. Exhibit Nos. (1) - (5). At no time did the defendants seek the adduction of new evidence that had come to their attention by 10/7/2025, when they took the witness stand. With this background, the court is urged to find that parcels No. 340 and 343 were excised from L.R. No. 7122, which is a totally different land parcel from L.R. No. 7121, as per the attached survey map marked PS-(1) and (2).
19. In this application, one of the grounds for review is that the court finds that the evidence of PW2 and PW3 was misleading, as they had no capacity to act for Birunda Farm in view of ELC No. 91 of 2015 attached as PS-(3).
20. As a starting point, the defendants had an opportunity at the hearing to cross-examine the witnesses and impeach the evidence. Secondly, annexures marked PS-(1) and (2) are not certified or authenticated by the custodian of the survey maps, the Director of Surveys, under the *Survey Act*. Thirdly, the judgment purported to be attached as PS-(3) is not annexed at all. Fourthly, the applicants have already filed a notice of appeal before the Court of Appeal. The applicants cannot have it both ways.
21. Fifthly, as held in *Barmasai -vs- Rono & Others [2025] KECA 1489 [KLR]*, the role of cadastral maps and title deeds in the land registration process is key as regards the geographical location of a parcel of land, its size, and boundaries. The applicants have not attached copies of green cards, subdivisions, and title deeds to substantiate the history of the parcels of land said to have been erroneously included in the judgment.
22. An error apparent on the face of the record must be real, apparent, and require little or no probing.
23. What the applicants are alleging are contested facts requiring evidence to verify and or proof. Why the alleged new evidence, and especially the survey maps, were not made available to the court during the filing of the statement of defence, before the pre-trial conference, and at the hearing is not clear. The applicants had an opportunity to offer that evidence and to cross-examine the opposite party on the said facts, if at all they were in existence before the judgment was entered.
24. A party cannot have it both ways. The applicants have waited for far too long. The delay has not been explained. A good ground for appeal may not necessarily be a ground for review. The court finds the applicants' application to be not only incompetent in view of the notice of appeal, but also lacking merits. It is dismissed with costs.
25. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 4TH DAY OF FEBRUARY 2026.

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:



Court Assistant - Dennis

Miss Lichuma for plaintiff/respondent present

Mukabane for defendant/applicants present

