



**Mwangi v Gathogoh & 6 others (Environment and Land Appeal
E107 of 2022) [2026] KEELC 750 (KLR) (11 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 750 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E107 OF 2022
JA MOGENI, J
FEBRUARY 11, 2026**

BETWEEN

WAMBUI MWANGI APPELLANT

AND

JOHN KIOHI GATHOGO 1ST RESPONDENT

SUSAN SHIRLEY GATHONI MURITHI 2ND RESPONDENT

**UIGUANO WA KIRERE SAVINGS COOPERATIVE SOCIETY 3RD
RESPONDENT**

REGISTRAR OF LANDS, RUIRU 4TH RESPONDENT

**CHIEF LAND REGISTRAR MINISTRY OF LAND AND PHYSICAL
PLANNING 5TH RESPONDENT**

DIRECTOR OF SURVEY 6TH RESPONDENT

THE HONORABLE ATTORNEY GENERAL 7TH RESPONDENT

RULING

1. The Applicant herein brought an application to review, vary, revise and/or set aside the Judgment delivered by Hon Justice B. M. Eboso on 23/01/2024.
2. The Honorable Court had delivered a Judgment upholding the Judgment of the Ruiru SPMC E&L Case No. 63 of 2020 as per the reliefs sought in the Amended Plaint as set out in prayers (a), (b), (c) and (d) where the 1st and 2nd Respondents were declared the owners of Ruiru/Ruiru West Block 3/1189. A permanent injunction was issued against the Defendants restraining them and or their servants from occupation and utility of the suit property.



3. At the same time the Court issued a mandatory directive to the Director Survey Kenya to give a true map showing the physical location of LR Ruiru/Ruiru West Block 3/1189 and LR Ruiru/Ruiru West Block 3/134.
4. The Director Survey in a letter to the Deputy Registrar of this Honorable Court dated 14/04/2025 stated that the two parcels of land were positively identified on the ground and that they are distinct both on the map and on the ground.
5. That LR Ruiru/Ruiru West Block 3/1189 is physically situated along Umoja Road off Membley Road mapped on sheet 3 and LR Ruiru/Ruiru West Block 3/134 is situated along Membley Road mapped on sheet 1 as per annexure 'WM-4' produced by the Applicant,
6. It is this Survey Report that has necessitated the Applicant to file the subject application seeking to have the Court, review, set aside or vary its findings in the Judgment dated 23/01/2024 on the ground that the Survey Report found that the 1st and 2nd Respondents are in occupation of Ruiru/Ruiru West Block 3 /134 which belongs to the Applicant/Appellant.
7. Despite service, none of the Respondents filed a response to the Application.
8. Even when an application is not opposed, the Court is not bound to automatically grant the orders sought. The Court retains the discretion to ensure that the orders sought are merited based on the law and facts presented.
9. The Court issued directions on filing of submissions on 28/07/2025 when only the Applicant appeared in Court. The Applicant filed their submission dated 29/05/2025.
10. The gist of the Applicant's submissions is that the Survey Report identified that the ground upon which LR Ruiru/Ruiru West Block 3/134 is where the 1st and 2nd Respondents have trespassed. That the report states that the land upon which the 1st and 2nd Respondents are trespassing belongs to the Applicant. That the Applicant is the rightful owner of LR Ruiru/Ruiru West Block 3/134. Thus the 1st and 2nd Respondents should be directed to relocate. The Applicant relied on the cases of Court of Appeal decision of Tokesi Mambili and Others vs Simion Litsanga (2004) eKLR and Kithoi vs Kioko (1982) KLR. They also considered the provisions of Section 26 (1) of the Land Registration Act and Article 40 of the Constitution.

Analysis and Determination

11. An application for review under Order 45, Rule 1 of the Civil Procedure Rules requires new and important evidence or an error on the face of the record.
12. In Mohamed v Karugui & Another (2023), the Court dismissed an attempt to reopen a suit where a Surveyor's Report existed, stating:

“It is trite law that litigation must come to an end... The Court cannot re-open a suit based on speculations, suppositions, conjectures and or innuendos.”
13. I have read the Surveyor's Report over and over and also the letter shared with the Hon. Deputy Registrar and at paragraph 5 I have tried to reproduce the conclusion by the Surveyor where the findings state that the plots are separate and distinct. This means that the Court's finding of ownership for one plot remains valid because it does not infringe on the other.
14. In Kenda v Njapit & 5 Others (2025) KEELC 3066 (KLR), the Court noted that a Judge is not a survey expert, and a report compiled with survey equipment is more useful for determining the physical reality



of land. Therefore, re-litigating the same facts after a technical report confirms no overlap does not meet the legal threshold for review, variation or setting aside.

15. As a matter of fact, the Surveyor's finding and clarification that the two plots are separate and distinct, does not contradict the core finding of ownership as expressed in the finding of Justice Eboso and so the Surveyor's Report supports rather than invalidate the Court Judgment that identified the plot belonging to the 1st and 2nd Respondents.
16. Given the foregoing, I do find the application dated 14/05/2025 unmerited and dismiss it. Each party to bear their own costs of the application.

It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT THIKA VIA VIDEOLINK THIS 11TH DAY OF FEBRUARY, 2026.

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MOGENI J

JUDGE

In the presence of: -

Dr. Kinyanjui for the Appellant/Applicant

1st – 7th Respondents – Absent

Melita - Court Assistant

