



**Misoi & another v Misoi (Environment and Land Case 385 of 2012) [2026] KEELC 559 (KLR) (5 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 559 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT AND LAND CASE 385 OF 2012**

**EM WASHE, J**

**FEBRUARY 5, 2026**

**BETWEEN**

**LABAN MISOI ..... 1<sup>ST</sup> PLAINTIFF**

**EDWARD MISOI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**FRANCIS MISOI ..... DEFENDANT**

**RULING**

1. The 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs (hereinafter referred to as “the Applicants”) did file a Notice of Motion Application dated 15.08.2025 (hereinafter referred to as “the present Application”) against the Defendant (hereinafter referred to as “the Respondent”) seeking the following Orders; -
  - a. That the Application be certified urgent and service here of be dispensed with in the first instance owing to the reasons of urgency. (Spent)
  - b. That this Honourable Court may be pleased to reopen the attendant suit and issue directions and/or orders as may be expedient to the parties herein in the interest of justice.
  - c. That this Honourable Court be pleased to issue temporary injunction restraining the Defendants/Respondents either by themselves, their agents and/or servants or any person acting or claiming through them from in any way executing the judgement of this Honourable Court issued on the 23<sup>rd</sup> of June 2025 relating to Kiplombe Kuinet/kuinet 9 (asmara)/1,2,3,4 & 5 pending inter-parte hearing of this Application. (Spent)
  - d. That this Honourable Court be pleased to issue temporary injunction restraining the Defendants/Respondents either by themselves, their agents and/or servants or any person acting or claiming through them from in any way executing the judgement of this Honourable



Court issued on the 23<sup>rd</sup> of June 2025 relating to Kiplombe Kuinet/Kuinet 9 (asmara)/1,2,3,4 & 5 pending the hearing and determination of this Application.

- e. That this Honourable Court be pleased to vary its judgement issued on the 23<sup>rd</sup> June 2025 particularly relating to the 2/3 of Kiplombe Kuinet/kuinet 9 (asmara)/1,2,3,4 & 5.
  - f. That the costs of this Application be provided for.
2. The grounds in support of the above prayers are contained in the body of the present Application as well as the Supporting Affidavit thereof and can be summarized as follows; -
- i. The suit herein was settled by way of a Consent Judgement recorded by the parties on the 23.06.2025 and a Decree extracted thereof.
  - ii. The Applicant did confirm that the Decree was subsequently served on the County Surveyor, Uasin Gishu for execution.
  - iii. The Applicant did further plead that according to the advice of the County Land Surveyor, Uasin Gishu, the recreation of the original property known as LR.NO.8405/1 would be costly because it would require the payment of stamp duty thereof.
  - iv. In addition to the above, the Applicant did state that it would open up a new and fresh litigation over the 2/3 of the original property known as LR.NO.8405/1 which would be registered in the name of Gangji Mulji Patel.
  - v. The 1<sup>st</sup> Applicant did state that although he had ownership rights over the portion measuring 2/3 of the original property known as LR.NO.8405/1 owned by Gangji Mulji Patel, he did not know his whereabouts thereof.
  - vi. Consequently, the Applicants did seek this Court to set-aside the Consent Judgement recorded on the 23<sup>rd</sup> June 2025 in the interest of justice.
  - vii. The Applicants did inform the Court that portions of the properties known as Kiplombe Kuinet/Kuinet 9 (asmara)/1,2,3,4 and 5 belonged to other persons who were not parties in the present suit and therefore the cancellation of their titles without their participation was unjust.
  - viii. Be as it may, the Applicants sought this Court to stay the Consent Judgement recorded on the 23<sup>rd</sup> June 2025 pending the hearing and determination of the present Application.
3. The present Application was duly served on the Respondent herein.
4. The Respondent did oppose the same by filing a Replying Affidavit dated 22.09.2025 on the following grounds; -
- i. The Respondent did confirm that indeed a Consent Judgement was recorded in Court by all the parties herein on the 23.06.2025.
  - ii. The Respondent did state that the Applicants and the Respondent herein were family members.
  - iii. The dispute before the Court was in relation to the original property known as LR.NO.8405/1 which was registered in the names of two persons known as Kimisoï Bargoria(deceased) And Gangji Mulji Patel in the ratio of 1/3 and 2/3 respectively.
  - iv. Upon demise of Kimisoï Bargoria in the year 1970, the 1<sup>st</sup> Applicant and the Respondent did jointly purchase the portion measuring 2/3 of LR.NO. 8405/1 from Gangji Mulji Patel.



- v. Consequently thereafter, the portion measuring 2/3 Of LR.NO.8405/1 was transferred to the names of the 1<sup>st</sup> Applicant and the Respondent while the portion measuring 1/3 of LR.NO.8405/1 was transferred to the Estate of Kimiso Bargoria.
  - vi. On or about the year 1989, the 1<sup>st</sup> Applicant did file a suit against the Respondent known as Eldoret High Court Case No. 36 OF 1989 seeking an Order to remove the name of the Respondent from the 2/3 portion of the property known as LR.NO.8405/1.
  - vii. However, before the proceeding known as Eldoret High Court Case No. 36 OF 1989 would be heard and concluded, the 1<sup>st</sup> Applicant did proceed to sub-divide the entire LR.NO.8405/1 into five portions and transferring the same to other persons including the sons.
  - viii. It was upon the transfer of the five portions to the 1<sup>st</sup> Applicant's sons that the 2<sup>nd</sup> Applicant herein did file another suit known as Eldoret High Court Case No. 82 OF 1996 against the Respondent seeking orders of eviction thereof.
  - ix. The suit known as Eldoret High Court Case No. 82 OF 1996 by the 2<sup>nd</sup> Applicant against the Respondent herein was never heard and concluded.
  - x. Be as it may, the 2<sup>nd</sup> Applicant did file another suit known as Eldoret High Court Case No. 162 OF 2007 against the Respondent seeking the same Orders as those in the previous proceeding known as Eldoret High Court Case No. 82 Of 1996.
  - xi. On or about 22.10.2024, the file known as Eldoret High Court Case No. 82 OF 1996 was traced and consolidated with Eldoret High Court Case No. 162 OF 2007.
  - xii. Both files were then fixed for hearing on the 23.06.2025 and 24.06.2025.
  - xiii. It was on the 23.06.2025 when all the parties did reach an amicable settlement which was recorded by the Court verbally in the presence of all the parties.
  - xiv. The Respondent therefore was of the considered view that the present Application does not meet the threshold of an Order for review under Order 45 Rule 1 and 2 of the Civil Procedure Rules, 2010.
  - xv. According to the Respondent, the Applicants had failed to demonstrate any form of error and/or mistake apparent on the face of the Record and/or Consent, any new evidence which was not within their knowledge at the time of recording the consent or any other sufficient reason for the Court to review the Consent Judgement recorded on the 23<sup>rd</sup> June 2025.
  - xvi. The Respondent was of the considered view that the Consent Judgement recorded on the 23.06.2025 was to enable the restoration of the property known as LR.NO.8405/1 so that each party can have an equal footing for justice to be done.
  - xvii. In essence, the Respondent did aver that the consent recorded on the 23.06.2025 had resolved all the disputes between the parties herein and there was nothing to litigate in the file.
  - xviii. The Respondent did point out to the Court that the only facts that can set-aside a Consent Judgement are those similar as required to set-aside a contract.
  - xix. In conclusion, the Respondent sought this Court to dismiss the present Application with costs.
5. The Replying Affidavit by the Respondent was duly served on the Applicants who did not rebut the allegations therein by filing any Further or Supplementary Affidavit in response.



6. The Court did then direct that the present Application would be heard by way of written submissions.
7. The Applicants in compliance to the above direction did file their submissions dated 27.11.2025 and the Respondent did file his submissions dated 17.11.2025.
8. In considering the present Application, this Court has gone through the present Application, the Response by the Respondent and both submissions and identified the following issues for determination; -
  - Issue No.1- Whether The Applicants Have Satisfied The Grounds Warranting The Setting Aside Of A Consent Judgement?
  - Issue No. 2 - Whether The Present Application Is Merited Or Not?
  - Issue No. 3- Who Shall Bear The Costs Of The Present Application?
9. The Court having identified the above-mentioned issues for determination, the same will now be discussed hereinbelow.

**Issue No.1- Whether The Applicants Have Satisfied The Grounds Warranting The Setting Aside Of A Consent Judgement?**

10. The first issue for determination is whether or not the Applicants have satisfied the grounds upon which a Consent Judgement may be reviewed and/or set-aside.
11. The Applicants confirm that indeed a Consent Judgement was recorded on the 23.06.2025 in settlement of the matters in the presence of all the parties.
12. The Applicants state upon extraction of the Decree thereof, they were advised that the implementation of the Judgement dated 23.06.2025 would result to addition payment of stamp duty and possibly another litigation with a third party that they cannot longer trace.
13. In essence, the Applicants sought this Court to review and/or set-aside the Consent Judgement recorded on the 23.06.2025 and allow the matter to go for full hearing.
14. The Respondent on the other hand did once against confirm that the Judgement recorded on the 23.06.2025 was through a consent arrived at by the parties.
15. The Respondent was of the view that the Consent Judgement recorded on the 23.06.2025 was regular, valid and binding on the parties in this suit.
16. The Respondent did plead that there are no valid grounds for the review and/or setting aside of the Consent Judgement dated 23.06.2025.
17. In fact, the Respondent did aver that the Consent Judgement recorded on the 23.06.2025 was reverting the suit property to its original position before the unlawful sub-division undertaken by the 1<sup>st</sup> Applicant.
18. As such, the Respondent was of the considered view that the Consent Judgement recorded on the 23.06.2025 was just and fair to all parties in the matter.
19. Indeed, the Court did record a Consent Judgement on the 23.06.2025 as pronounced by the Counsel for the Applicants and the Respondent.
20. As such, the Consent Judgement recorded on the 23.06.2025 can only be review, set-aside and/or vacated in only two methodologies.



21. The first methodology to set-aside the Consent Judgement dated 23.06.2025 is for the parties to file and/or record a Consent vacating, reviewing and/or setting aside the same.
22. The second methodology is what is provided for in the case of The Board Of Trustees National Social Security Fund-versus- Michael Mwalo (2015) eKLR which held as follows; -
  - “The judgment arose from consent of the parties to the suit.  
The law pertaining to setting aside of consent judgments or consent orders has been clearly stated.  
A court of the law will not interfere with a consent judgment except in circumstances such as would provide a good ground for varying or rescinding a contract between parties.  
To impeach a consent order or a consent judgment, it must be shown that it was obtained by fraud or collusion or by an agreement contrary to the policy of court.”
23. According to the above authority, the only grounds that a Court can review and/or set-aside a Consent Judgement is where the same was obtained through fraud, collusion and/or is contrary to policy of the Court.
24. Unfortunately, none of the three grounds outlined hereinabove were pleaded and proved by the Applicants herein.
25. The only ground that was relied upon by the Applicants was the inconvenience that the Consent Judgement dated 23.06.2025 was creating in its implementation.
26. The alleged inconvenience by the Applicants is something that will have to be surmounted by the parties in the pursuit of justice and does not amount to sufficient grounds to set-aside, review and/or vacate the Consent Judgement recorded on the 23.06.2025.
27. In conclusion, this Court hereby makes a finding that the Applicants have not pleaded and/or proved any grounds for the Consent Judgement dated 23.06.2025 to be reviewed, set-aside and/or vacated as sought in the present Application.

### **Issue No. 2 - Whether The Present Application Is Merite Or Not?**

28. The second issue for determination is whether or not the prayers sought in the present Application can be granted or not.
29. However, based on the finding in Issue No.1 hereinabove, the Court is of the considered view and finding that the prayers sought in the present Application are not merited and cannot be granted.

### **Issue No 3-who Shall Bear The Costs Of The Present Application?**

30. On costs, the Applicants have not been successful in prosecuting the present Application and therefore are condemned to pay the costs to the Respondent.

### **Conclusion**

31. In conclusion, the Court hereby makes the following Orders in determination of the present Application; -
  - A. The Notice Of Motion Application Dated 15.08.2025 Be And Is Hereby Dismissed Forthwith.



B. The Applicants Are Condemned To Pay The Costs Thereof To The Respondent Herein.

**DATED , SIGNED AND DELIVERED AT ELDORET THIS 5<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**EMMANUEL.M. WASHE**

**JUDGE**

In The Presence Of:

Court Assistant: Brian

Counsel for the Applicants: Mr. Bittok

Counsel for the Respondent: Khayeli holding brief for Mr. Sambu

