

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ELC CASE NO. 104 OF 2019**

**MOHAMED YASIF SOROYA**(suing as the  
legal representative of the estate of  
**Mohammed Yusuf Soroya,**  
deceased).....**PLAINTIFF/APPLICANT**  
-VS-

**BENARD MURITHI GATHURA.....1<sup>ST</sup>**  
**DEFENDANT/RESPONDENT**

**KEDE ENTERPRISES LIMITED.....2<sup>ND</sup>**  
**DEFENDANT/RESPONDENT**

**REGISTRAR OF TITLES.....3<sup>RD</sup>**  
**DEFENDANT/RESPONDENT**

**RULING**

1. Before this court is the notice of motion dated 27<sup>th</sup> May 2025 filed by the plaintiff/applicant, and the same is expressed to be brought under **Sections 1A, 1B,3A and 80** of the **Civil Procedure Act**, and **Order 45 Rule 1 and 2**, and **Order 51 Rule 1** of the **Civil Procedure Rules** seeking the following orders:-

1. *Spent.*
2. *Spent.*
3. *This honourable court be pleased to review, vary and or set aside its orders made on 6<sup>th</sup> May, 2024.*
4. *In the alternative to prayer no. 3 above, this honourable court be pleased to issue a review*

***of the judgment dated 6<sup>th</sup> May, 2024 as the plaintiff has since discovered new evidence which was not within its knowledge at the time of the hearing and before delivery of the said judgment which evidence goes to the root of the case.***

***5. The costs of this application be provided for.***

2. The application is premised on the grounds on its face. It is further supported by the affidavit of the plaintiff/applicant sworn on even date. The plaintiff/applicant deposed that a certified copy of the white card, a copy of the official search, a copy of the stamp duty payment, a copy of the official search post registration, a copy of the transfer of lease, a copy of the certificate of lease and a copy of her medical report confirming her illness status was not available at the time of the hearing and before the issuance of the orders of this court. The plaintiff/applicant deposed that there has been no delay in making the application, and that the same has been made in good faith. Further, that the said judgment has exposed her to the risk of having the certificate of title issued on 14<sup>th</sup> April, 2008 revoked and cancelled.
3. The application was opposed by the replying affidavit of the 1<sup>st</sup> defendant/respondent sworn on 28<sup>th</sup> July, 2025. The 1<sup>st</sup> defendant/respondent deposed that the original plaintiff was granted leave to file a supplementary bundle of documents dated

15<sup>th</sup> September, 2020 and he had the chance to include all the essential documents to prove ownership and he opted not to. Further, that upon the demise of the original plaintiff, the substituted plaintiff was granted several adjournments to get their pleadings in order, and it cannot be denied that the plaintiff/applicant had several chances to relook into the evidence they had submitted.

4. The 1<sup>st</sup> defendant/respondent deposed that the plaintiff/applicant was aware of all the channels available for accessing land records and had the ample time to make inquiries or seek additional documentation, and that the documents now attached seek to conveniently seal the loopholes identified in the court's judgment and do not constitute new evidence. Further, that the plaintiff/applicant failed to state a specific fact which went to the core of the judgment on whether a site visit to the suit property was done which would reveal that he was in occupation at the time.
5. It was deposed that the plaintiff/applicant did not ascertain the status of possession from the date of the purchase in 2008 to the time of filing the suit in 2019. In conclusion, he deposed that the instant application is an abuse of the court process and its timing

is questionable as there has been no action until recently when he applied for the decree.

6. The plaintiff/applicant filed a further affidavit in response thereto which was sworn on 17<sup>th</sup> November, 2025. The plaintiff/applicant reiterated the contents of her supporting affidavit, and deposed that the unavailability of the new evidence at the time of the hearing was not her fault and the same is material for the just determination of the matter. The plaintiff applicant deposed that the documents were obtained from the ministry of lands and the official search confirms the true record of the register as at the time, and that there is no fraud as alleged.
7. The application was canvassed through written submissions. The 1<sup>st</sup> defendant/respondent filed his written submissions dated 14<sup>th</sup> January, 2025. The plaintiffs/applicants did not file their written submissions. Be that as it may, I have considered the application, the replies thereof and the written submissions filed by the 1<sup>st</sup> defendant/respondent. In my view, the issue for determination is *whether the plaintiff/applicant has provided sufficient proof to warrant review of the judgment.*
8. The application for review has been brought a year after judgment was delivered in this matter. The reason for the delay is said to be

caused by the ill health of the plaintiff/applicant. However, the plaintiff/applicant claims that the documents annexed to the application were not available during the hearing of the suit and before judgment was delivered. Further, that based on the information, which is now in her possession, there is need for review of the said judgment. On the other hand, the 1<sup>st</sup> defendant/respondent contended that the plaintiff/applicant is attempting to seal the loopholes contained in the judgment and it is suspect that the instant application was filed at a time when he had applied for the decree.

**9. Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules 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.”***

**10. Order 45, Rule 1 of the Civil Procedure Rules provides as follows:**

***“(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.***

***(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review”***

**11.** From the above provisions, it is clear that while **Section 80 of the Civil Procedure Act** grants the court the power to make orders

for review, **Order 45** sets out the procedural rules and the scope of review by hinging review to discovery of new and important matters or evidence, mistake or error on the face of the record and any other sufficient reason.

**12. In Republic versus Public Procurement Administrative Review Board & 2 others [2018] e KLR 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.”*

**13. Also, in the case of Otieno, Ragot & Company Advocates v National Bank of Kenya Limited [2020] eKLR, the Court of Appeal held that:-**

*“The main grounds for review are therefore; discovery of new and important matter or evidence, mistake or error apparent on the face of the record;*

***or for any other sufficient reason and most importantly, the application has to be made without unreasonable delay.”***

14. I have looked at the documents annexed to the application, and I have also looked at the proceedings in this matter. I note that the original plaintiff sought to amend the plaint, and subsequently following the demise of the said original plaintiff, the plaint was amended sometime in the year 2023. In my view, it is the responsibility of the plaintiff/applicant to build her case to ensure that no information is left out in the process. From the documents annexed, it is my humble opinion that these documents were easily accessible from the relevant government agencies i.e. the ministry of lands. I also believe that the same documents could be assessed from the learned counsel who handled the said transaction.

15. In the case of **D. J. Lowe & Company Limited Vs Banque Indosuez [1998] KECA 108 (KLR)**, the Court of Appeal held as follows:-

***“Where such a review application is based on fact of the discovery of fresh evidence the court must exercise greatest of care as it is easy for a party who has lost, to see the weak part of his case and the temptation to lay and procure evidence which will strengthen that***

***weak part and put a different complexion. In such event, to succeed, the party must show that there was no remissness on his part in adducing all possible evidence at the hearing.”***

- 16.** While I place reliance on the above authority against the reasons advanced by the plaintiff/applicant, it is my finding that the ill health of the plaintiff/applicant is not sufficient reason to justify the inability to access or obtain these documents, as this is a responsibility that could be delegated even to the counsel who had instructions to represent her in the matter.
- 17.** For the reasons stated above, I find the notice of motion dated 27<sup>th</sup> May, 2025 lacking in merit, and the same is hereby dismissed. Each party to bear their own costs.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY  
THIS 12<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**HON. MBOGO C.G.  
JUDGE  
12/02/2026.**

***In the presence of:***

*Ms. Benson Arunga - Court assistant*  
*Ms. Bina holding brief for Ms. Ngaruiya for the 1<sup>st</sup> Defendant*  
*/Respondent*  
*Mr. Eugene Akumu for the Plaintiff/Applicant*

ORIGINAL