

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

ELC CASE No. 8 OF 2019 (O.S)

**THE BOARD OF MANAGEMENT, SYMBIOS
KABEIYO PRIMARY SCHOOL 1ST
PLAINTIFF/APPLICANT**

**SYMBIOS KABEIYO
MICRO COMMUNITY 2ND
PLAINTIFF/RESPONDENT**

**SYMBIOS CHILDREN'S HOME 3RD
PLAINTIFF/RESPONDENT**

VERSUS

**ELIZABETH JELAGAT CHEPSIROR
(sued as the Administratrix of the estate of late **KIPYEGO
CHEPSIROR KOLIL (DECEASED)**
.....**DEFENDANT/RESPONDENT****

RULING:

1. This court has been called upon to determine the 1st Plaintiff/Applicant's Notice of Motion Application dated 18th September, 2025 seeking the following orders:-

(1) Spent

(2) THAT there be a review of the judgment and decree delivered on 24th February, 2021 to vary the orders therein so that the whole 11.8 acres hived from Uasin Gishu/Sosiani Settlement Scheme/112 be registered solely in the name of Symbios Kabeiyo Primary School, to be held in trust by The Treasury, National Government.

(3) THAT the Land Registrar, Uasin Gishu County, to hive off 11.8 acres from Uasin Gishu/Sosiani Settlement Scheme/112 do effect registration in the name of Symbios Kabeiyo Primary School accordingly.

(4) THAT there be no orders as to costs.

2. The grounds pleaded in support of the above prayers are set out on the face of the Motion as well as the Supporting Affidavit sworn on the same date by Stephen Bett, the Applicant's head teacher. He deponed that judgment in this matter was delivered on 24th February, 2021 awarding 11.8 acres from Uasin Gishu/Sosiani Settlement Scheme/112 to be registered in the names of the 1st, 2nd and 3rd Plaintiffs. He deponed that the 2nd and 3rd Plaintiffs/Respondents have no proprietary interests in the suit property since it was acquired for purposes of establishing a school.
3. Mr. Bett averred that the school was established as a private institution and later registered as a public institution and is up and running. He deponed that the 2nd and 3rd Plaintiffs have since relinquished their rights to the land and have stated that the same be transferred to Symbios Primary School which is a public Primary School and registered for the Treasury. He added that the 1st Plaintiff is in absolute possession of the property. He further deponed that under the law, Primary School land must be registered solely in the name of the Treasury, National Government in trust for the school.
4. The AG, who is on record for the 1st Plaintiff/Applicant herein filed an Affidavit of Service sworn by Erastus Kirui, a court Process Server, on 6th October, 2025. From the said Affidavit of

Service, the Notice of Motion was served on the 2nd and 3rd Plaintiffs' representatives on 25th September, 2025. That service was accepted by Daniel Rop and Samwel M. Songok as the representatives for the 2nd and 3rd Plaintiffs respectively. On the same day, the application was served on the Defendant/Respondent and was accepted by her son, Eliud K. Too as the Defendant was away from home.

5. Despite service of the Application on all the Parties herein, none of them has filed any response either opposing or supporting the Motion.

Analysis and Determination:

6. I have carefully read and considered the 1st Plaintiff/Applicant's Application herein and the Supporting Affidavit thereto. The only issue for determination is whether the 1st Plaintiff/Applicant has met the threshold for review of the judgment of this court made on 24th February, 2021.
7. It is trite that once a court has made a decision on merit, it ought not revisit the matter as it becomes functus officio. However, the court has power to review the orders issued through its judgments, although this power is limited and ought to be exercised cautiously, scrupulously and judiciously, only to the extent allowed by law.
8. The jurisdiction to grant review of court decisions is provided for in Section 80 of the Civil Procedure Act, while the procedural law for review is set out in Order 45(1) of the Civil Procedure Rules. Section 80 of the Civil Procedure Act provides as follows;

80. Review

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.

9. Order 45 Rule 1 for the Civil Procedure Rules provides as follows;

1. Application for review of decree or order [Order 45, rule 1]

(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.

10. Therefore, for a party to succeed in seeking orders of review, they must demonstrate that:-

(a) *There is discovery of new and important matter or evidence, which was not in his knowledge or could not be produced by him after exercise of due diligence; or*

(b) *There is a mistake or error apparent on the face of the record; or*

(c) *There is a sufficient reason; and*

(d) *The application for review has been made without unreasonable delay.*

11. The Applicant in this case has not claimed any error on the face of the record or that they have discovered new or important matter or evidence after the delivery of the judgment that was not available to them at the time of the hearing and determination of the case. The only ground remaining on which this instant application can be anchored is that of existence of sufficient reason.

12. As to what constitutes sufficient reason or cause, the Court of Appeal in **Pancras T. Swai vs Kenya Breweries Limited [2014] KECA 883 (KLR)** held that: -

“29. ...As repeatedly pointed out in various decisions of this Court, the words, “for any sufficient reason” must be viewed in the context firstly of Section 80 of the Civil Procedure Act, Cap 21, which confers an unfettered right to apply for review and secondly on the current jurisprudential thinking that the words need not be analogous with the other grounds specified in the order. In Sarder Mohamed v. Charan

Singh Nand Sing and Another (1959) EA 793, the High Court correctly held that Section 80 of the Civil Procedure Act conferred an unfettered discretion in the Court to make such order as it thinks fit on review and that the omission of any qualifying words in the Section was deliberate. In Shanzu Investments Limited v. Commissioner for Lands (Civil Appeal No. 100 of 1993) this Court with respect, correctly invoked and applied its earlier decision in Wangechi Kimata & Another vs. Charan Singh (C.A. No. 80 of 1985) (unreported) wherein this Court held that:-

‘... any other sufficient reason need not be analogous with the other grounds set out in the rule because such restriction would be a clog on the unfettered right given to the Court by Section 80 of the Civil Procedure Act; and that the other grounds set out in the rule did not in themselves form a genus or class of things which the third general head could be said to be analogous’.

13. On this front, the 1st Plaintiff /Applicant admits that the judgment of 24th February, 2021 ordered that the 11.8 acres of land known as Uasin Gishu/Sosiani Settlement Scheme/112 be hived off and registered in favour of the three Plaintiffs herein. The Applicant however, claims that the 2nd and 3rd plaintiffs have no proprietary interests in the land and have since relinquished their shares to the 1st Plaintiff/Applicant.
14. What I understand the Applicant to be saying is that the judgment should be reviewed because there is a substantive change owing to the alleged relinquishing of the rights to the

suit property by the 2nd and 3rd Plaintiffs. The question before this court is to determine whether this is a sufficient reason to grant the review. In **Tokesi Mambili and others vs Simion Litsanga (2004) eKLR**, the court held as follows:-

“i. In order to obtain a review an applicant has to show to the satisfaction of the court that there has been discovery of new and important matter or evidence which was not within his knowledge or could not be produced at the time when the order to be reviewed was made. An applicant may have to show that there was a mistake or error apparent on the face of the record or for any other sufficient reason.

ii. Where the application is based on sufficient reason it is for the Court to exercise its discretion.

15. In the instant case, the fact that none of the Respondents filed a response does not mean that the Applicant's assertions would be accepted as gospel truth. What the 1st Plaintiff/Applicant proposes this court to do has the effect of depriving the 2nd and 3rd Plaintiffs of their shares to the suit property. The 1st Plaintiff/Applicant claims that the 2nd and 3rd Plaintiff have relinquished their rights to the land and have no objection if the same were to be transferred to Symbios Primary School and registered to the Treasury.

16. Owing to this, one would expect that the 1st Plaintiff/Applicant would annex an agreement or MOU or any document to show that the 2nd and 3rd Plaintiff are indeed willing to surrender their shares in the suit land to the 1st Plaintiff/Applicant. At the very least, the 1st Plaintiff/Applicant should have procured Affidavits

from the representatives of the 2nd and 3rd Plaintiffs indicating that they were in support of this Motion for review and expressly stating that they would have no objection if the suit property is solely registered in the name of the 1st Plaintiff/Applicant. Moreover, and in view of the undisputed fact that judgment was delivered in favour of the 3 plaintiffs who are now proprietors of the suit land, nothing can stop them from dealing with the land decreed to them in any manner, including transferring and registering it in the manner sought in the application herein even without an order from court. Alternatively, the plaintiffs/Applicants could have brought the application herein jointly since they filed and prosecuted the suit together.

17. The 1st Plaintiff/Applicant claimed that the land was purchased solely for purposes of establishing a school. I have taken time to read the judgment sought to be reviewed and note that the Plaintiffs herein called one joint witness, one Stephen Kipsang Boit. He told the court that the land was purchased with funds obtained from Symbios Micro Community International in 1999 to start the three institutions, which I understand to be the three Plaintiffs herein. This is contrary to the claim that the land was purchased solely to start the school.
18. It does not escape my mind that if the orders sought herein do issue, the 2nd and 3rd Plaintiffs will have been divested of their shares in the suit land without being heard by this court, and without any confirmation that they consented to such an act.

19. In the absence of any evidence demonstrating that the 2nd and 3rd Plaintiffs have indeed relinquished their shares in the land to the 1st Plaintiff/Applicant, I am unable to issue the orders sought in this present application. The only conclusion that can be made is that the 1st Plaintiff/Applicant has not satisfied this court that it is entitled to the order of review of judgment dated 24th February, 2021 sought in its application.

Orders:-

20. Flowing from the above, I find that the 1st Plaintiff/Applicant application dated 18th September, 2025 has no merit and it is therefore dismissed with no order as to costs.

21. Orders accordingly.

DATED, SIGNED and DELIVERED virtually at **ELDORET** on this **26TH** day of **FEBRUARY, 2026** vide Microsoft Teams.

HON. C. K. YANO
ELC, JUDGE

In the virtual presence of;

Mr. Kwame holding brief for Ms. Cheruiyot for Plaintiffs.

No appearance for Defendants.

Court Assistant - Laban.