



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**  
**ELC LC NO. E034 OF 2025**

**BETWEEN**

**IN THE MATTER OF SECTIONS 13, 56 AND 57 OF THE  
TRUSTEES ACT CAP 167 LAWS OF KENYA**

**AND**

**IN THE MATTER OF LAND REFERENCE NO. 12715/1279  
(ORIGINAL NO. 12715/1259/21) CERTIFICATE OF TITLE NO.  
I.R. 75571**

**AND**

**ANNE WATETU & JULIUS MUISYO  
MUSOMBA.....APPLICANTS**

**AND**

**ANNE WATETU & JULIUS MUISYO MUSOMBA (*as Trustees  
of Angel Kasese Musomba & Wangui Musomba*)  
.....RESPONDENTS**

## **RULING**

1. This ruling pertains to an *ex parte* post-judgment notice of motion dated 12/08/2025, filed by the applicants. The motion is presented as made in accordance with **Sections 13 (1), (2) and 19** of the **Environment and Land Court Act No. 19 of 2011**, **Sections 1A, 1B, 3A and 80** of the **Civil Procedure Act Cap 21**, **Rule 3 (2)** of the **High Court (Practice and Procedure) Rules**, **Order 45 Rule 1** and **Order 51 Rule 1** of the **Civil Procedure Rules**, and all enabling provisions of Law and Procedure. The applicants seek the following orders from this court: -

***a. Spent.***

***b. That this honourable court be pleased to review and/or set aside its judgment which was delivered on 10th June 2025 and all consequential orders thereon.***

***c. That the judgment of the court delivered on 10th June 2025 be reviewed by setting aside the dismissal order and allowing the prayers sought in the originating summons.***

***d. That this honourable court do make any such further orders and issue any other relief that it may deem fit in the interest of justice.***

***e. That the costs of and incidental to this application be provided for.***

2. The motion is supported by the grounds set out in the body thereof and the supporting affidavit of their counsel, Mr. Kefa Ombati, sworn on the instant date, and in a nutshell, he states that the applicants sought court permission to sell **Land Reference Number 12715/1279 (Original Number 12715/1259/21) (“suit property”)** to pay university and school fees for Angel Kasese Musomba and Wangui Musomba. Their application was dismissed because their lawyers accidentally omitted the second page of the property title, failing to prove ownership as trustees. The applicants state this was an honest mistake and emphasise the urgency, as the students risk missing school if fees are not paid soon. They are now asking the court to review its decision, arguing that allowing the sale of the suit property is in the best interest of justice for the children. A complete copy of the certificate of title for the suit property is presented to the court in support of the assertions.
3. As directed by the court, the applicants' arguments were adequately canvassed by the written submissions that were received from the law firms of **Ms. Kefa Ombati & Co. Advocates** dated 29/08/2025. In consequence, the counsel's arguments and provisions of the law and judicial precedents relied upon in presenting their submissions shall be considered by this court.
4. Accordingly, having carefully considered the application, grounds, affidavit, and submissions, the sole issue for

determination is whether the applicants have satisfied the legal threshold necessary to justify the review of the judgment.

5. As submitted by the applicants' counsel, the relevant provisions governing the review of court decisions are encapsulated in **Section 80** of the **Civil Procedure Act** and **Order 45 Rule 1** of the **Civil Procedure Rules**. **Section 80** states that:

***“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.”***

6. Further, **Order 45 Rule 1 (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.”***

7. The salient conditions delineated in **Order 45 Rule 1 (1)** of the **Civil Procedure Rules**, including the discovery of new and important matter, mistake, and sufficient cause, must be established by the applicant. In considering such applications, the court is required to exercise its judicious discretion. In the present case, the applicants’ counsel stated that, while their office was scanning documents for submission to the court’s electronic filing system at the time of filing the originating summons, they inadvertently failed to upload the final page of the title documents. In essence, counsel is advancing the ground of mistake, which has been the subject of numerous judicial pronouncements.

8. On the issue of counsel's mistake, the Supreme Court of Kenya, in its most recent decision, expressed itself as follows in **Madhwani v Burton [2025] KESC 77 (KLR):-**

***“Whereas mistakes of counsel ought not to be visited upon a litigant as we held in Waruhiu Vs Munene & another [2021] KESC 42 (KLR) and Gaciani & 11 others Vs Kimanga & another [2023] KESC 23 (KLR), there must be cogent and credible evidence that the applicant made some effort or acted diligently in the circumstances, by providing evidence of steps taken. It is not enough for a party to simply blame the former advocate for all manner of transgressions. As we held in Karinga Gaciani Case, “Courts have always emphasized that parties have a responsibility to show interest in and to follow up on their cases even when they are represented by counsel, and it does not matter whether the party is literate or not.”***

9. In the case of **Belinda Murai & others vs Amoi Wainaina, [1978] LLR 2782 (CALL) Madan, J.A.** (as he then was) stated as follows: -

***“A mistake is a mistake. It is no less a mistake because it is unfortunate slip. It is no less pardonable because it is committed by senior counsel. Though in the case of Junior counsel the court might feel compassionate more readily. A blunder on a point of law can be a mistake. The door of justice is not closed because a mistake has been made by a lawyer of experience who ought to know better. The court may not condone it but it ought certainly to do whatever is necessary to rectify it if the interests of justice so dictate. It is known that courts of justice themselves make mistakes which is politely referred to as erring in their interpretation of laws and adoption of a legal point of view which courts of appeal sometimes overrule...”***

10. Furthermore, in **Philip Keipto Chemwolo & another v Augustine Kubende [1986] KECA 87 (KLR), Apalo, J.A.** (as he then was), posited as follows:

***““Blunders will continue to be made from time to time and it does not follow that because a mistake has been made that a party should suffer the penalty of not having his case determined on its merits.I think the broad equity approach to this matter is that unless there is fraud or intention to overreach, there is no error or default that cannot be put right by payment of costs. The court, as is often said, exists for the purpose of deciding the rights of the parties and not for the purpose of imposing discipline.”***

11. Mr. Ombati informs this court that the mistake was neither deliberate nor intended to obstruct or delay the course of justice; instead, it resulted from an inadvertent human error and a genuine, unintended mistake. This court believes him, as the parties had a straightforward case, and the only reason judgment was not entered in their favour was because the copy of the title document they presented to the court showed that the suit property is still registered in the name of the deceased **Jackson N. Musomba (“deceased”)**.

12. Counsel has explained the circumstances that led to such a finding and has provided a complete copy of the title document, which shows that after the deceased’s names were registered, the following subsequent entries were made on the certificate of title of the suit property:

*"Entry number 2 "Grant of letters of administration of the estate of Jackson Ndungu Musomba (deceased) to Anne Watetu and Julius Muisyo Musomba (Administrators) - Date of Registration 20-01- 2025".*

*Entry number 3 "Transfer to Anne Watetu and Julius Muisyo Musomba as personal representatives of the Estate of Jackson Ndungu Musomba (deceased) - Date of Registration 20-01-2025". Entry number 4 "Transfer to Anne Watetu and Julius Muisyo Musomba in trust for themselves and for Angel Kasese Musomba and Wangui Musomba (beneficiaries) - Date of Registration 20- 01- 2025."*

13. Having considered these entries that were evidently omitted mistakenly and not supplied to the court, the court finds no valid grounds to deny the pending motion. The motion was filed timeously. Granting it will promote the overriding objectives of justice administration and ensure the best interests of the children are met, particularly concerning their right to education. The court deems the motion appropriate, and the impugned judgment will be reviewed in the entire *paragraph 13* to account for the mistake, hence leading to the following final disposal orders:-

***1. The judgment dated 10/06/2025 is reviewed and, in particular, paragraph 13, which is to read as follows:***

***“In the premises, the originating summons succeeds, and the following final disposal orders are hereby issued: -***

- I. That the applicants are hereby authorised and allowed to sell and transfer Land Reference No. 12715/1279 (Original No. 12715/1259/21), Certificate of Title number I.R. 75571, and to apply the proceeds realised from the sale of the property in the settlement of the following: a) the costs of and incidental to the sale and transfer of the property; b) the payment of university fees and education-related expenses for Angel Kasese Musomba at United States International University - Africa; c) the payment of school fees and education-related expenses for Wangui Musomba at Elim Group of Schools; and d) the investment of the balance of the proceeds of sale in a savings or call account for the future application to the education of Angel Kasese Musomba and Wangui Musomba.***
- II. The applicants shall bear their respective costs.”***

Orders accordingly.

**Delivered and Dated at Machakos this 24<sup>th</sup> February, 2026.**

**HON. A. Y. KOROSS  
JUDGE  
24.02.2026**

**Ruling delivered virtually through Microsoft Teams Video  
Conferencing Platform**

In the presence of;

Ms Kanja Court Assistant

No appearance for parties.