



Parmet v Hillegers t/a Style Foundatioin (Environment and Land Judicial Review Case E001 of 2026) [2026] KEELC 1218 (KLR) (3 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1218 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E001 OF 2026**

MN MWANYALE, J

MARCH 3, 2026

BETWEEN

FRANCIS LESHILA PARMET APPLICANT

AND

ADRIANUS HILLEGERS T/A STYLE FOUNDATIOIN RESPONDENT

RULING

1. This Ruling is in respect of the Notice of Motion dated 09.01.2026 which sought
 - a. Judicial review orders of certiorari to remove into this Honourable court and quash the directions and orders issued by Kilgoris Magistrates Court on 8th of January 2026 which orders stayed eviction orders and allowed the re-opening of the school known as Maasa Education Centre.
 - b. Declaration that Kilgoris Law Courts become functus officio upon delivery of its ruling and eviction orders of 18th December 2025.
 - c. An order of prohibition to restrain the Kilgoris Magistrates Court from entertaining, hearing or issuing any further orders in MCELC Misc. E008/2025.
 - d. The Honourable court be pleased to affirm, uphold and validate to eviction orders issued on 18th December 2025.
2. The grounds in support of the application being interalia that
 - i. The Kilgoris Magistrate's Court conclusively heard and determined MCELC Misc. E008/2025 and delivered a ruling on 18th December 2025 and granted eviction orders therein.
 - ii. That upon delivery of the said orders, the trial court become functus officio have exhausted its jurisdiction.



- iii. The Respondent never filed any response to the original and did not seek review, setting aside or appeal within the law.
 - iv. That an application dated 8th of January 2026 was filed after final determination without jurisdiction and satisfying the statutory thresholds for review, which resulted into issuance of stay of eviction orders which orders authorised the re-opening of the school thus the court sat on appeal against its own orders and acted in excess of jurisdictions.
 - v. The application invoked the supervisory jurisdiction of this court; and was supported by an affidavit of Mr. Francis Leshila Parmet.
 - vi. The application was argued orally Mr. Tuyia held brief for Messrs Makallah Advocates for the Applicant while Ms. Kwega appeared for the Respondent.
3. Mr. Tuyia relied on the application and the supporting affidavit and argued that the trial court acted excess of jurisdiction, since after delivery of judgment a court could not entertain any application in a matter.
 4. The court posed a question to Mr. Tuyia, on whether the decision that he sought to quash was a judicial decision or administrative decision of the trial court, to which Mr. Tuyia started that the decision was a judicial one.
 5. The court further asked him why he opted to file a JR against a judicial decision as opposed to an appeal, and whether the JR was proper, to which Mr. Tuyia responded that an appeal ought to have been preferred as against a JR.
 6. Ms. Kwega Learned Counsel in her brief submissions, indicated that the application was a misapprehension of the law, in that under order 10 Rule 11 of the Civil Procedure Rules, a court can be moved by a party to set aside its own Judgment as was the case herein.
 7. Reliance was placed on the decision of James Kanyita Nderitu Vs. Marios Phelitous Ghikas on powers of courts to set aside Regular default Judgments as well as irregular default judgments.
 8. Having conceded that an aggrieved party ought to file an appeal against a judicial decision as opposed to a judicial review to quash the decision herein, the application is thus fatally defective and the court ought to strike it out, but since as Ms. Kwega submits, the decision to set aside the judgment was proper in view of provisions of Order 10 Rule 11, of the Civil Procedure Rules, the court shall proceed on the merits of the application.
 9. The trial court was thus right to consider an application for setting aside under Order 10 Rule 11 of the Civil Procedure Rules provides “where judgment has been entered under this order, the court may set aside or vary such judgment and/or consequential decree or order upon such terms as are just...” and acted within its jurisdiction. As that application was only handled at the exparte stage and it is still pending, the court shall not dwell into whether the Learned Trial Magistrate was right or erred, to issue the stay of eviction orders as he did.
 10. The court confirms that under Order 10 Rule 11, a court can set aside its own judgment and/or decree hence the Learned Magistrate exercised that jurisdiction and certainly did not sit on appeal on his own decision.
 11. The application is thus not only fatally defective but was also filed under a misapprehension of the law and it therefore lacks merits and it is hereby dismissed with costs.

DATED AT KILGORIS 3RD DAY OF MARCH, 2026



HON. M.IN. MWANYALE

JUDGE

In the presence of

CA – Sylvia/Sandra/Clara

Mr. Tuyia for the Applicant

N/A for Ms. Kwanga for the Respondent

