

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT**  
**KITALE**  
**ELC NO. 173 OF 2016**

**JOEL** **ROTICH**  
**CHANGAROK-----PLAINTIFF/APPLICANT**

**VERSUS**

**THE ATTORNEY GENERAL-----1<sup>ST</sup>**  
**DEFENDANT/RESPONDENT**  
**LAND ADJUDICATION & SETTLEMENT-----2<sup>ND</sup>**  
**DEFENDANT/RESPONDENT**  
**EUNICE NASIMIYU WANYAMA-----3<sup>RD</sup>**  
**DEFENDANT/RESPONDENT**  
**KHAEMBA DIVISION SIANGURA-----4<sup>TH</sup>**  
**DEFENDANT/RESPONDENT**

**RULING**

**1.** The court, by an application dated **25/8/2025**, is asked to set aside, vary, and or review the judgment and decree issued on **12/6/2025**, concerning **L.R. No. 783 Zea Settlement Scheme**, declare the applicant (derivatively from Prof. Joshua Kwonyike), the lawful and equitable or beneficial owner, on account of purchaser's interest as acknowledged by the government of Kenya and out of his possession since **2009**. Order the Chief Land Registrar, County Land Registrar, and the

Settlement Fund Trustees to process a discharge and issue him with a title, cancel, and expunge from the register any purported allocation, transfer and dealings over the land in favour of Pamela Nasimiyu Khalisa or any other person made on or after **29/1/2024**, order the Registry Index Map and the register be rectified as per the surveyor's report dated **19/9/2022**, and to inhibit or restrict the parcel register.

- 2.** The reasons are contained on the face of the application and in a supporting affidavit sworn by Joel Rotich Changorok on **25/8/2025**. The applicant deposes that based on **Section 80** of the Civil Procedure Act, there is an error apparent on the face of the record, discovery of new and important evidence, and a sufficient cause to review and set aside the judgment.
- 3.** The applicant deposes that the suit land was initially allocated to Prof. Joshua Kwonyike by the Settlement Fund Trustees in **1996/1997** by a letter of offer dated **2/12/2002**, who paid **Kshs.98,000/=** as per annexure marked **CJ-3**. The applicant deposes that in **September 2022**, the court ordered a survey of the land, where a surveyor's report dated **19/9/2022** confirmed the existence of parcels No. **783** and **832**, not their measurements.

4. The applicant deposes that during the pendency of the suit on **29/1/2024**, the suit land was irregularly allocated afresh to Pamela Nasimiyu Khalisha despite the doctrine of *lis pendens* as per annexure marked **CJ-5**. The applicant deposes that the court erred by ignoring the government's acceptance of full purchase process for parcel No. **783** and upholding his legitimate expectation that a title would issue, thereby violating **Article 47** of the Constitution, disregarded the surveyor's report, resulting in a contradictory and erroneous judgment, and failed to address the issue of fresh allocation of the parcel, during the pendency of the suit, which constitutes fundamental issue of illegality and fraud.
5. The applicant deposes that he had filed several applications and protests seeking recusal of the court for bias, which were declined, and the proceedings and judgment now give a reasonable apprehension of bias as per annexure marked **CJ-6**. The applicant deposes that he stands to suffer grave injustice, having paid for the suit land, taken possession, and relied on government documents only to be deprived of the land by irregular allocation and administrative misconduct.

6. The application was served upon the respondents, and affidavits of service and hearing notices were filed before the court.
7. **Section 80** of the Civil Procedure Act, as read together with **Order 45** of the Civil Procedure Rules, gives the court power to review, vary, or set aside the orders or judgment, where there is the discovery of new and important matter or evidence that with 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 or order was passed, on account of some mistake or error apparent on the face of the record or for any other sufficient reason.
8. In **Pancras T. Swai -vs- Kenya Breweries Ltd [2014] eKLR**, cited **Sadar Mohamed -vs- Charan Singh, (1959) EA 179, and Wangechi Kimata & Another -vs- Charar Singh CA No. 80 of 1985,** that any other sufficient reason need not be analogous with the other grounds set out in the rules.
9. In this application, the applicant seeks to have the judgment reviewed, on account of alleged new documentary and survey evidence, discovery of unlawful and fundamental allocation to the third party contrary to the doctrine of *lis pendens*,

misapprehension of the surveyor's report, government acceptance of full purchase price creating legitimate expectation, and non-recusal from hearing the matter.

- 10.** What has been the correct based on the plaint dated **1/12/2016** was the applicant's claim to be declared owner of L.R. No. **783** Zea Settlement Scheme and a permanent injunction on account of the sale to him on **13/6/2002**. The suit was opposed through a statement of defence and counterclaim by the 3<sup>rd</sup> and 4<sup>th</sup> defendants dated **4/6/2018**, to which the plaintiff opposed through a reply to the defence and counterclaim dated **23/10/2018**.
- 11.** The 1<sup>st</sup> and 2<sup>nd</sup> defendants opposed the suit by a statement of defence dated **24/9/2021**, disowning the alleged sale of land by Joshua Kwonyike on **13/6/2008** for lack of capacity, nullity, withdrawal of the offer, non-existent parcel, being a trespasser, and after subsequent transfer.
- 12.** After hearing all the parties and looking at their documentary evidence, the court found that neither the plaintiff nor the 3<sup>rd</sup> and 4<sup>th</sup> defendants had a good title.
- 13.** In ***Igainya Ltd & Others -vs- Godfrey Kariuki Githae & Others Civil Appeal No. 655 of 2019***

**[2026 KECA 252 [KLR] (13<sup>th</sup> February 2025)**

**(Judgment)**, the court said that the doctrine of a *bona fide* purchaser cannot cure an illegality at inception, indefeasibility of title is not absolute, and **Article 40** of the Constitution does not extend protection to unlawfully acquired property, and that a purchaser who relies solely on the register without interrogating the legality of the process leading to registration, does so at his own peril.

**14.** In this application, the applicant relies on documents that were within the court's possession at the time the court rendered its judgment. They cannot amount to new and important evidence; misapprehension of the same cannot be a ground of review but appeal. There is no evidence of the alleged transfer of title during the pendency of this suit. The applicant did not produce such evidence before the court. When and how the applicant discovered the new evidence is not clear. There are no annexures to show the alleged changes.

**15.** Inhibition orders under **Sections 68** and **69** of the Land Registration Act are only on titled land. Evidence of registration is missing.

**16.** It is a trite law that only a registered proprietor of land can pass a good title to a purchaser in terms of **Section 24(a)** of the Land Registration Act. In the

absence of registration or proof that Joseph Kwonyike had authority from the Settlement Fund Trustees to sell the suit property, the sale agreement conferred no proprietary interest on the applicant. In **Joseph Arap Ngok -vs- Moijo Ole Keiwua [1997] eKLR**, the court held that title to landed property is acquired only through registration.

**17.** In **Nyamogo & Nyamogo Advocates -vs- Kago [2001] 2 EA 173**, the court held that there is a real distinction between a mere erroneous decision and an error apparent on the face of the record. The court said that when an error on a substantial point of law stares on the face, and there could be no two opinions, a clear case of an error on the record must be made. The court said that a mere error or wrong view may certainly be a ground of appeal, but not of review.

**18.** In **National Bank of Kenya Ltd -vs- Ndungu Njau [1997] eKLR**, the court said that it will not be a sufficient ground of review if another judge could have taken a different view of the matter, nor can it be a ground of appeal that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion. The court said that misconstruing a statute or other provisions of the

law cannot be a ground for review, but only for an appeal.

19. In **Pancras T. Swai -vs- Kenya Breweries Ltd [2014] eKLR**, the court said that it could be a dangerous precedent if court decisions, which should be addressed through appeals, were attacked in courts that made them under the guise of review when such courts are functus.
20. The applicant faults the court on account of bias. An application for recusal has to be made formally, but not through a letter. As to legitimate expectation, representation, promise, practice, conduct, or an action outside the prescription of the law, or undertaken by a person or entity without authority, is illegal and cannot give rise to legitimate expectation. See **Fanikiwa Ltd -vs- Sirikwa Squatters Group & Others Petition No. 32 [E035] and 36 of 2022**.
21. Joshua Kwonyike had no better title to pass to the applicant. A court of law cannot be used as an instrument of illegality. A nullity is a nullity. Nothing can flow from an illegality. See **Kiplagat Kotut -vs- Rose Jebor Kipngok [2020] KEELC 2832 (KLR)**.
22. The applicant's sale agreement was predicated on an illegality. The seller had not perfected the charge. He had no authority to sell the land. He had

no good title to pass. The applicant has no superior title to pass. In **Botwa Farm Company Ltd -vs- Settlement Funds Trustee & Attorney General [2019] KECA 258 [KLR]**, the court cited **John Kamunya & Another -vs- John Nginyo Muchiri & Others [2015] eKLR**, that a land transaction between a purchaser and a seller that took place before the seller had completed paying a mortgage with the Settlement Fund Trustees, and discharged his indebtedness, was of no contractual effect.

**23.** The court said that in view of the failure to join the new owners as parties to the suit, the court could not cancel those titles without giving them an opportunity to be heard. Prayers numbers **6, 7, and 8** are seeking declaration orders against parties who are not joined in this suit. The court cannot issue such substantive orders when the said persons are not parties to this suit. Such reliefs require a substantive suit and cannot be heard through an application for review.

**24.** The upshot is that I find the application incompetent and lacking merit. It is dismissed with no order as to costs. file closed.

**25.** Orders accordingly.

**Ruling dated, signed, and delivered via Microsoft Teams/Open Court at Kitale on this 11<sup>th</sup> day of March 2026.**

**In the presence of:**

Court Assistant - Dennis

Dr. Chang'orok for the plaintiff present

Miss Odeyo for Chilaka for the 1<sup>st</sup> and 2<sup>nd</sup> defendant present



**HON. C.K. NZILI  
JUDGE, ELC KITALE.**