



**Mudembei & 3 others v Wafula & 13 others (Civil Appeal (Application)  
81 of 2011) [2026] KECA 343 (KLR) (27 February 2026) (Ruling)**

Neutral citation: [2026] KECA 343 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPEAL (APPLICATION) 81 OF 2011  
MS ASIKE-MAKHANDIA, HA OMONDI & LK KIMARU, JJA  
FEBRUARY 27, 2026**

**BETWEEN**

**DISHON MUDEMBEI ..... 1<sup>ST</sup> APPLICANT  
REUBEN S MUDEMBEI ..... 2<sup>ND</sup> APPLICANT  
JOHN ASAMBU SABATIA ..... 3<sup>RD</sup> APPLICANT  
LEAH USIDE SABATIA ..... 4<sup>TH</sup> APPLICANT**

**AND**

**DISMAS WAFULA ..... 1<sup>ST</sup> RESPONDENT  
JACK SOITA WAMBUA ..... 2<sup>ND</sup> RESPONDENT  
ZAKAYO KAKAI ..... 3<sup>RD</sup> RESPONDENT  
DAVID JANDI ..... 4<sup>TH</sup> RESPONDENT  
CHRISTOPHER WABWIRE ..... 5<sup>TH</sup> RESPONDENT  
ISAACK MWAKWE ..... 6<sup>TH</sup> RESPONDENT  
FESTUS KHASIANI ..... 7<sup>TH</sup> RESPONDENT  
JOHN KADI ..... 8<sup>TH</sup> RESPONDENT  
GEORGE COSMA KAGHALI ..... 9<sup>TH</sup> RESPONDENT  
NORAH SAMMY L OGANA ..... 10<sup>TH</sup> RESPONDENT  
KEPHA IMBUSI ..... 11<sup>TH</sup> RESPONDENT  
HESBORNE NGANYI ..... 12<sup>TH</sup> RESPONDENT  
CHARLES SUDI ..... 13<sup>TH</sup> RESPONDENT  
HELLEN JAHENDA LIVAI ..... 14<sup>TH</sup> RESPONDENT**



*(Being an application for review of the Judgment of this Court (Maraga, Gatembu & Murgor, JJ, A.) dated 25th September, 2015 in CIVIL APPEAL NO. 81 OF 2011)*

**RULING**

1. Before us is an application dated 16<sup>th</sup> February, 2024, brought under Sections 1A, 1B, 3, 3A and 63(e) of the *Civil Procedure Act*, Order 45 and Order 51 of the Civil Procedure Rules, and all other enabling provisions of the law. The applicant seeks in the main two prayers, to wit, stay of execution of the taxed bill of costs; and secondly that this Court reviews its judgment dated 25<sup>th</sup> September 2015. It would appear that the first prayer has since been overtaken by events, as Mr Miyienda, learned counsel for the applicants conceded this much during the plenary hearing of the application. We will accordingly only deal and address the prayer for review in the application in this ruling.
2. The application is premised on the grounds on its face and the supporting affidavit sworn by Reuben S. Mudembei, “the 2<sup>nd</sup> applicant” on his own behalf and on behalf of the other applicants. They all speak to the fact, that the judgment of this Court sought to be reviewed was delivered on 25<sup>th</sup> September, 2015. That the 1<sup>st</sup> respondent acted in person while the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents were represented by counsel who later passed on in 2017, leaving them unrepresented. That the 4<sup>th</sup> respondent, mother to all the other respondents, was ailing at the time of delivery of judgment and subsequently died on 6<sup>th</sup> January 2017, while the 3<sup>rd</sup> respondent has continued to ail, thereby imposing a financial burden and constraints on the family.
3. The applicants aver that as a result they have struggled to put together funds for her treatment and for legal services, including selling part of the land which delayed the filing of this application. They maintain that the parcel of land, Kakamega/Soy/113, “the suit property” was originally allocated by the Settlement Fund Trustee to their father, Sabatia Musiani Asambwa, who never sold any portion thereof to the respondents. They further assert that the court erred in holding that the Supplementary Record of Appeal dated 29<sup>th</sup> November 2013 was filed without leave, yet leave had in fact been granted on 13<sup>th</sup> November 2013, and that this was an error apparent on the face of the record and materially affected the outcome.
4. They argue that had the court considered the documents contained in the Supplementary Record of Appeal, it would have arrived at a different decision. They therefore urge the court to review the judgment, contending that the respondents fraudulently acquired titles to the suit property that did not belong to them; that the family has suffered immense loss; and that no prejudice will be occasioned to the respondents if the order sought was granted. That the application was brought in good faith in pursuit of justice and truth.
5. There was no response to the application filed by the respondents though there was evidence on record that they had been duly served with the application.
6. When the application was called out for plenary hearing, Mr. Miyienda, learned counsel, appeared for the applicants, while the respondents were neither present nor represented though again, there was evidence they had been served with the day’s hearing notice if the affidavit of service on record was anything to go by. Similarly, none of the parties had filed written submissions as directed by the Deputy Registrar of this Court. Mr Miyienda, opted to rely solely on the affidavit in support of the application in arguing the application whose contents we have already reproduced elsewhere in this ruling.
7. The law governing applications for review in this Court is settled.



Unlike the High Court, which derives its review jurisdiction from Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules, this Court has no general power of review. Its jurisdiction is limited to correction of clerical or accidental slips under the slip rule, and in the most exceptional circumstances, to reopening an appeal to avert a manifest injustice.

8. In *Benjoh Amalgamated Ltd & Another v Kenya Commercial Bank Ltd* [2014] eKLR, the Court emphasized that it has inherent jurisdiction to reopen a matter only where it is demonstrated that the decision was obtained by fraud, mistake, or misrepresentation, or where the interests of justice demand, but that such jurisdiction must be exercised sparingly to protect the principle of finality in litigation.

Similarly, in *Nguruman Limited v Shompole Group Ranch & Another* [2014] eKLR, the Court reiterated that review of its own decisions is not available save for correction of accidental slips or omissions, and that parties cannot use review as a backdoor appeal. In *National Bank of Kenya Ltd v Ndungu Njau* [1997] eKLR, the Court held that an error apparent on the face of the record must be self-evident and not one that requires elaborate argument to establish.

9. In *Muyodi v Industrial and Commercial Development Corporation & Another* [2006] 1 EA 243, the Court held that review is not available to correct an erroneous conclusion of law or to relitigate matters already determined, but only to address patent errors or new evidence that could not have been produced with reasonable diligence. Further, in *Standard Chartered Financial Services Ltd v Manchester Outfitters (Suiting Division) Ltd & 2 Others* [2016] eKLR, the Court underscored that finality of litigation is a cardinal principle, and reopening a concluded appeal after inordinate delay undermines certainty and stability in the law. The Court further in *Jackson Muthama Kilonzo v Kenya Railways Corporation* [2018] eKLR, stressed that exceptional circumstances must be demonstrated, and mere dissatisfaction with the outcome or reliance on documents belatedly introduced cannot suffice.

10. Applying these principles in the circumstances of this application, we note that the application before us is anchored on the provisions of the *Civil Procedure Act* and Rules made thereunder, which do not donate review jurisdiction to this Court over its final judgments but to the High Court, courts of equal status and the magistrate's courts. Much as this omission would have been fatal in the past, it is no longer tenable as Article 159 of *the Constitution* of Kenya advances substantial justice over technicalities. We can easily discern from the body of the application that it seeks a review of this Court's judgment in terms of Rules 1(2) and 37(1) of this Court's Rules. As we see it, the relief sought, which is a substantive review of a final judgment delivered ten years ago, on the merits, falls outside the slip rule. The alleged error apparent concerns a legal conclusion on Rule 29 compliance, not a clerical slip, and the application otherwise seeks an impermissible merits re-argument of a concluded appeal after inordinate delay. The distinction between leave to file a supplementary record and leave to admit additional evidence under Rule 29 was a matter of legal interpretation, not a patent slip.

11. The Court's statement in the judgment reflected a legal conclusion on compliance with Rule 29, which is distinct from permission to file a supplementary record for completeness. There is therefore no patent clerical or accidental slip; the statement reflects a legal conclusion, not a typographical mistake. The judgment turned on a holistic re- evaluation of the record, including SFT registers, the green card, land control consents, and contemporaneous settlement correspondence. The court found that "Mushangi/Musiani Asambwa" was the original allottee; that the letter of 26<sup>th</sup> February 1991 was outweighed by register evidence; and that trust and proprietary claims failed.

12. The present application invites the Court to revisit that merits assessment on the strength of documents which, by the Court's own analysis, were not properly admitted under Rule 29. That is precisely what the limited review jurisdiction forbids. The delay of nearly ten years before bringing this



application militates against reopening it. While the applicants cite illness, bereavement, and financial constraints, the delay remains inordinate, and the reasons do not surmount the very high threshold for reopening a concluded appellate judgment.

13. Finality in litigation particularly in land disputes long since executed and settled on the ground, carries significant public interest weight. No fraud, nullity, or procedural defect intrinsic to the judgment has been demonstrated. The asserted ground cannot found a reopening, and even if *arguendo* leave to file were conflated, the relief sought would still entail a merits re-evaluation contrary to the constraints of review.
14. In the result, we are satisfied that the narrow powers of review available are inapplicable to the facts of this application. The alleged error concerning the supplementary record was a matter of legal evaluation addressed in the judgment, not a patent slip. The documents relied upon were not properly admitted under Rule 29, and the Court was entitled to reject them. The delay is inordinate, and the prejudice to finality outweighs the applicants' grievances.
15. Based on the foregoing, we are satisfied that no basis has been laid for us to exercise this Court's exceptional jurisdiction to review its judgment. The application dated 16<sup>th</sup> February 2024 is accordingly dismissed with costs to the respondents.

**DATED AND DELIVERED AT KISUMU THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**ASIKE-MAKHANDIA**

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**JUDGE OF APPEAL**

**H.A. OMONDI**

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**JUDGE OF APPEAL**

**L. KIMARU**

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**JUDGE OF APPEAL**

*I certify that this is a true copy of the original*

*Signed*

Deputy Registrar

