



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MILIMANI LAW COURTS, NAIROBI
ELC PETITION CASE NO E093 OF 2025

MOOGON ENTERPRISES LIMITED.....
PETITIONER/RESPONDENT

VERSUS

NATIONAL LAND
COMMISSION.....RESPONDENT/APPLICANT

RULING

Background

1. This matter was coming up for judgement on the petition when the applicant filed the notice of motion application dated 3rd February 2026 seeking to arrest the judgement
2. That application was supported by the affidavit sworn by Brian Ikol on the following grounds inter alia
 - a) The counsel for the respondent/ applicant had just come on record when the matter was proceeding for judgment and that it was in the interest of justice for the respondent to be heard with its counsel on record.
 - b) That the matter had proceeded earlier without the respondent being with full information of the suit property which information was now available and it would held the court make a proper determination

- c) That the replying affidavit sworn earlier had been a holding affidavit as the respondent/applicant sought more information in regards to the suit property
 - d) That unless the judgment is arrested the respondent/applicant stands to suffer prejudice which cannot be remedied by an appeal or review hence this application
3. The notice of motion application sought for the following orders;
- a) Spent
 - b) That the honourable court be pleased to arrest the delivery of the pending judgement set for 12th February 2026 pending the hearing and determination of the application
 - c) The matter be reopened and heard afresh and the respondent /applicant be granted leave to withdraw the replying affidavit sworn by Brian Ikol on 11th October 2025 and substitute with a fresh replying affidavit
 - d) Costs be in the cause.

Respondent's reply

4. The application was opposed via the replying affidavit sworn on by Abdullahi Noor dated 6th February 2026. He deponed that the respondent/applicant had participated in the proceedings through legal representation all through up until the matter was fixed for judgement.
5. He deponed that the replying affidavit sworn by the respondent was a valid court document that had not been disputed by the deponent which affidavit gave history of the suit property and attributing the

ownership to the petitioner a decision that was arrived at by the respondent. That in seeking to withdraw the same was unjustified and unwarranted as the evidence that backed the affidavit had been in the respondent/applicant's custody

6. He further deponed that the ground raised of discovery of new information and evidence from the Nairobi city county is misleading as the said Nairobi city council had been party to ELC 385 OF 2021 Mogoon Enterprises Limited Vs Nairobi Metropolitan Services & Nairobi City County where the issue of ownership was dealt with conclusively attributing ownership to the petitioner which information was in the knowledge of the respondent.

7. He deponed that the power of the court to arrest of judgment could only be invoked on the production of evidence that new information which was not available before close of the case had been discovered which was not the case here

Applicant 'submissions

8. The applicant filed submissions dated 5th March 2026 and submitted on

i. Whether the applicant is entitled to the prayers sought?

Counsel submitted that in the interest of justice it would be prudent to allow the respondent/applicant be allowed to have his counsel on record represent it before judgement is given relying on the provision of section 1A,1B and 3A of the Civil procedure Act. He further relied on the case of **Toppias & 4 others Vs Bomet County Government & Another (2025) KECA (KLR) and**

**further Ali & 4 others Vs Gashambi & 8 others (2024) KEHC
8072(KLR)**

The applicant further insisted that there was discovery of new information which was not available as at the time they filed their replying affidavit.

Petitioner/Respondent's submissions

The petitioner in its submissions dated 12th March 2026 submitted on the following issue.

Whether the application met the threshold for arrest of judgement

The respondent submitted that the jurisdiction of a court to arrest a judgment was captured in the case of **Musa & 6 others (Suing on the own behalf and on behalf of Mwakirunge Residents upon the suit property/Plot No CR 345 numbering 366 Individuals) v Hassan & 4 2 others (Environment and Land Case 133 of 2015) [2025] KEELC 7299 (KLR)**

Counsel submitted that the applicant had not produced evidence to the court on what the new information they had acquired that sought to arrest the judgment hence not satisfied the threshold for a strong and justifiable ground. as in **Theuri & another v Mweni & 4 others; Trend Waves Limited (Interested Party) (Environment and Land Case 223 of 2020) [2025] KEELC 8513 (KLR)**

On the issue of lack of representation in the earlier proceedings counsel submitted that the applicant had been represented by

Caleb Osoro its legal officer hence they cannot claim that they were unheard.

It was submitted that the application had been brought as a tactical delay and should not be allowed as the petitioner will suffer prejudice if the judgment seeking to affirm the applicant's determination is arrested on basis of new information not before the court.

Analysis and Determination

9. The court has considered the application, the responses thereto and submissions on record and the main issue is whether the court should arrest its judgement. It is not in dispute that indeed the court had issued directions on the disposal of the petition herein and had reserved a date for judgement. The present application was filed before the date of the judgement. The application has however a been brought under Sections 1A, 1B and 3A of the Civil Procedure Act which are largely on the objectives of the Act and inherent powers of the court. Basically, these provisions reinforce the oxygen principles and emphasize interalia the need for just resolution of civil disputes. Article 159(2)(d) of the Constitution of Kenya 2010, mandates that justice shall be administered without undue regard to procedural technicalities. I will therefore proceed to consider the substance of the application. The Petitioner contends that the application is an abuse of the court process and the court has noted the Petitioner's rendition of the events culminating to the filing of the Respondent's replying affidavit including the instant application.

10. The Court is called to examine whether it has the jurisdiction to arrest Judgment. One of the principal issues is whether, and in what circumstances, this Court—has jurisdiction to arrest delivery of its own judgment at the stage reached in these proceedings. There is no specific provision of this concept for the arrest of Judgment in civil suits in the Civil Procedure Act or its Rules. The jurisprudence on the authority for arresting judgment is much clearer in the Kenya criminal practice. The provision of Section 324 of the Criminal Procedure Code expressly provides: -“324.Motion in arrest of judgment(1)The accused person may, at any time before sentence, whether on his plea of guilty or otherwise, move in arrest of judgment on the ground that the information does not, after any amendment which the court has made and had power to make, state an offence which the court has power to try...”

As highlighted above in civil matters, arrest of judgment is not expressly provided for. Instead, litigants may only try bring this out by invoking the provision of Section 6 or Section 80 of the Civil Procedure Act, Cap. 21 for stay of proceedings or review and/or Orders 12 (7) or 45 of the Civil Procedure Rules, 2010 for review, varying or setting aside Judgment or to amend pleadings under before Judgment is delivered. My understanding of the law, is that if Judgment has already been pronounced under Order 21 of the Rules, the proper recourse is through preferring an appeal, not by attempting to arrest or stay the Judgment at the trial court. The jurisdiction of this Court is derived from Article 162(2)(b) of the

Constitution, the provision of Section 13 of the Environment and Land Court Act, No. 19 of 2011 and the Civil Procedure Act, Cap. 21. While the Court has discretionary and inherent powers to ensure justice is administered, those powers are limited by the principle of finality in litigation. It is practise that once parties have closed their cases and Judgment has been scheduled, the Court becomes “functus officio” in respect of the hearing process, save for limited statutory exceptions. The doctrine of “functus officio” was explained by the Court of Appeal in the case of:- **“Telkom Kenya Limited v John Ochanda (suing on his own behalf and on behalf of 996 former employees of Telkom Kenya Limited) [2014] eKLR”**, where it was held that once a court has performed its task of hearing and reserving Judgment, it cannot reopen the matter except as provided for by law.

Similarly, in the case of: - **“Patel v EA Cargo Handling Services Limited [1974] EA 75”**, the Court stressed that discretion exists to prevent injustice, but must be exercised judiciously. That extensive research into the matter of arrest of judgment’ in civil practice is a misnomer .The court’s inherent jurisdiction allows it to control its own process, including recalling or staying its own Judgment in rare, exceptional circumstances prior to delivery, where clear injustice would otherwise result.

11 . This court has only limited, residual jurisdiction to stay its own hand and “arrest” the delivery of judgment prior to pronouncement, usually in very rare cases to prevent clear injustice, typically

involving either matters touching on fraud or gross error coming to light before pronouncement. Review and appeal remain the primary routes for challenging a judgment. Jurisprudence leans against the abuse of the process by 'arresting' judgment to defeat finality, except for strong and justifiable grounds shown by affidavit evidence.

Having submitted as above, I hold the view that this Court is not vested with general jurisdiction to 'arrest' judgment in civil practice under the Environment and Land Act or the Civil Procedure Act. Only in the rarest of circumstances—where manifest injustice or fraud arises before pronouncement—will the court stay its own judgment. Otherwise, the proper recourse is through review, appeal, or under expressly provided rules.

13. In the present case, the court was headed to pronounce the judgement having closed the cases of both the Petitioner and respondent/applicant. The applicant has not alluded in its pleadings or submissions on how the exceptional circumstances have been met to convince the court to arrest the judgement. The Applicant has not satisfied the high threshold to warrant being considered nor have they cited any decided case law that applies to civil claims where judgement was arrested. In the upshot I hold the view that that it lacks jurisdiction to arrest judgment at this stage where the matter has already been heard and at the participation of both parties as evidenced in the pleadings. At this juncture the petitioner is eager of the judgement being delivered and further delay will be

prejudicial to the petitioner. The Applicant's remedy lies in pursuing a review application or filing of an appeal after judgment is delivered.

Final disposition

For the foregoing reasons, I make the following orders

- i. That the grounds raised to arrest the judgement are hereby declined and the application dated 3rd February 2026 is hereby dismissed for lack of merit
- ii. Costs of the application to be borne by the applicant

It is so ordered.

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **25th** day of

March, 2026.

MOHAMMED N. KULLOW
JUDGE

Ruling delivered in the presence of: -

Ms. Olalo..... for the Respondent/Applicant

Mr. Kusow Holding brief for Ogoma..... for the Petitioner/Respondent

Philomena W...... Court Assistant