REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT IN KITALE

ECL NO. 118 OF 2017

JOHN TUKEI LONGUROKOL----------
PLAINTIFF/APPLICANT

VERSUS

GEOFFREY MOBRO LOKUDO----------DEFENDANT/RESPONDENT

RULING

1. This court is asked to grant leave to the firm of Kerubo Ondicho & Company Advocates to come on record for the applicant post judgment; to review the judgment delivered on **15/10/2025**; maintain the status quo; re-emphasize the proprietorship of Parcel Nos. **277** and **268,** and to issue costs.

2. The application is based on the fact that the respondent has misinterpreted the judgment and begun evicting the applicant from Land Title No. **West Pokot/Kishaunet/695,** the suit land**.** The applicant depones that this court had neither substantiated ownership and trespass to the suit land, nor did it confer ownership on the respondent, who, in collusion with the area chief, is purporting to

evict the applicant from the suit land without eviction orders.

3. The applicant deposes that he seeks the court to review the judgment and issue orders of status quo. The applicant further deposes that he stands to suffer irreparable harm and damage if the orders are not granted, yet he has filed the application without inordinate delay. A copy of the judgment is attached as **JTL-1.**

4. Opposing the application, through a replying affidavit sworn on **16/2/2026** under protest, the respondent deposes that neither he nor his advocates were served with the application, which he terms vague, misconceived, and the orders sought untenable, bad in law, incompetent, misplaced, and fatally defective.

5. According to the respondent, the court became *functus officio* upon delivering its judgment and therefore lacks jurisdiction to entertain this application. The respondent deposes that the suit has been in court for over **9** years and therefore litigation must come to an end. He says that there is no ambiguity in the judgment, and no evidence has been adduced to substantiate the allegations by the applicant on eviction.

6. The respondent deposes that not only is the application premised on the wrong provisions of the law, but it also seeks to introduce extraneous issues. Further, the respondent deposes that the application as filed is an abuse of the court process and an afterthought to delay the implementation of the Minister's Appeal since the suit was determined on merits.

7. The application before this court is premised on **Sections 1A, 1B, 3A, 80, and 99** of the Civil Procedure Act and **Orders 51, 45,** and **Order 9 Rule (1)** of the Civil Procedure Rules.

8. As a starting point, the guiding provision of law with regard to granting leave for an advocate to come on record after entry of judgment is **Order 9 Rule 9** of the Civil Procedure Rules. It provides that upon a change of advocate, or if a party decides to act in person where they had previously engaged an advocate, after judgment has been passed, such a change or intention to act in person, the same shall not be effected without an order of the court.

9. In ***S. K. Tarwadi -vs- Veronica Muehlemann [2019] eKLR,*** the court held that **Order 9 Rule 9** Civil Procedure Rules protects advocates from

mischievous clients, who wait until a judgment has been delivered and then sack the advocate and either replace him with another advocate or act in person. The provision is therefore an important one and cannot be wished away.

10. From the instant application, it is not clear whether the firm of M/s Changorok, Sabulei & Co. Advocates was served by the firm of Kerubo Ondicho & Co. Advocates with this application. There is no return of service to confirm that service was effected. The erstwhile advocates have not been duly notified.

11. The next issue is whether this court should review the judgment delivered on **15/10/2025**, order for the status quo to be maintained, and restrain the respondent from interfering with the applicant's occupation of parcel number **268.**

12. The applicant seems to be inviting the court to revisit the suit. It would amount to the court reopening the suit, which it has already determined on merits. *Functus officio* is defined in *Black's Law Dictionary 10th Edition*, as: "having performed his or her office (of an officer or official body), without further authority or legal competence because the duties

and functions of the original commission have been fully accomplished."

13. In ***Telkom Kenya Limited -vs- John Ochanda (Suing On His Own Behalf and on Behalf Of 996 Former Employees of Telkom Kenya Limited) [2014] eKLR,*** the court held that *functus officio* is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon. The court further held that the power to rehear a matter is transferred by the Judicature Act, to the appellate division. The rule applies where a formal judgment has been drawn up, issued, and entered. The rule is subject to two exceptions: where there had been a slip in drawing it up, and where there is an error in expressing the manifest intention of the court. See ***Raila Odinga & 2 Others -vs- Independent Electoral & Boundaries Commission & 3 others [2013] eKLR.***

14. **Order 45 Rule 1(b)** of the Civil Procedure Rules allows a person aggrieved by a decree or order for which no appeal has been allowed and who from the discovery of new and important matter or evidence which, after the exercise of due diligence was not

with 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 revision of without unreasonable delay.

15. In ***Republic -vs- Public Procurement Administrative Review Board & 2 others [2018] eKLR,*** it was held that **Section 80** gives the power of review and **Order 45 of the Civil Procedure** sets out the rules. The rules restrict the grounds for review. The jurisdiction and scope of review is limited to the following grounds; (a), discovery of new and important matter or evidence which after 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 was passed or the order made or; (b), on account of some mistake or error apparent on the face of the record, or (c), for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without unreasonable delay.

16. From the foregoing case law, the applicant has fallen short of meeting the threshold to warrant a review of the judgment of this court as delivered. The court's judgment is explicit that the applicant's suit was found lacking merit. There was no counterclaim brought by the respondent. Courts speak through rulings, orders, judgments, and decrees.

17. No positive order was issued by the court in favor of the respondent other than on the aspect of costs. The judgment of the court has only one meaning and no more. It would be mischievous of the respondent to use the same to achieve unintended results. The applicant, if faced with an unlawful eviction, ought to know the law, and counsel on record ought to know it better. Such a cause of action cannot fall within an already concluded matter.

18. The applicant's application is therefore lacking merit and is dismissed with costs. File closed.

19. Orders accordingly.

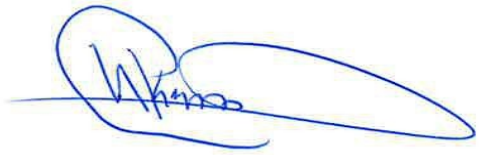
Ruling dated, signed, and delivered via Microsoft Teams/Open Court at Kitale on this 22nd day of April 2026.

In the presence of:

Court Assistant - Dennis

Chebii for the defendant/respondent present

Asembo for Ondicho for the applicant present



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