

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MAKUENI**  
**ELC APPEAL NO E006 OF 2022**

**JANET MUTHINI MATILIKU.....APPELLANT**

**VERSUS**

**ALEXANDER KILONZO.....1<sup>ST</sup> RESPONDENT**

**REGINA MAINGI.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. This is a ruling in respect of a notice of motion dated 12<sup>th</sup> September, 2025 in which the Appellant/Applicant seeks the following orders:

**1) Spent**

**2) Spent**

**3) That this honourable court be pleased to review and set aside its judgment delivered on 17<sup>th</sup> July 2025 in Matiliku v Kilonzo & another, Environment and Land Appeal No. E006 of 2022, to the extent that it varied the lower court's decree by introducing Regina Kavemba Maingi (2<sup>nd</sup> Respondent) as a joint trustee and co-registered proprietor of land parcel Nzai/Nziu/803, which issue was never pleaded nor canvassed in the trial court or on appeal.**

**4) That this honourable court be pleased to review its judgment on account of discovery of new and important evidence which, despite due diligence, was not produced at the hearing, namely: the Cadastral Map of Nzai/Nziu area which clearly demarcates the boundary between parcels Nzai/Nziu/803 and Nzai/Nziu/386, contrary to the assertion in the judgment that there is no boundary; and an official search for land parcel**

**Ukia/Utaati/1037, which is registered in the name of Martha Kauma Kawai, confirming that the true ancestral land of the family of Kinyenze Mukai is different from parcels 803 and 386, a court order issued in Makueni LDT 21 of 2007 where the Applicant herein evicted one of the grandsons to the late Mukai Kinyenze from land parcel No. Nzai/Nziu/803 and therefore the basis for holding 803 as family/ancestral land was erroneous.**

**5) That the costs of this application be in the cause.**

2. The Applicant is seeking to have the judgment delivered by this court on 17<sup>th</sup> July, 2025 reviewed on two grounds namely: that there is an error apparent on the face of the record and that there is discovery of new and important evidence which would not have been obtained during the hearing before the lower court or on appeal.
3. The Applicant contends that the second Respondent had renounced her interest in LR No. Nzai/Nziu/803 and that it was therefore erroneous for the court to order that she be registered as co-owner of LR No. Nzai/Nziu/803 when she had clearly stated that she was residing on LR No. Nzai/Nziu/386.
4. The Applicant also contends that the court made erroneous finding that there was no boundary between parcel Nos. Nzai/Nziu/803 and 386 contrary to existing maps which show that the two parcels are distinct and have their boundaries set out.
5. On the issue of discovery of new evidence, the Applicant contends that she has since discovered from a search on LR No. Ukia/Utaati/1037 which is registered in the name of Martha Kauma Kawai that it is the true ancestral land of Mukai Kinyenze which is different from parcel Nos. Nzai/Nziu/803 and 386. The Applicant further contends that she had obtained a court order given in Makueni LDTC 21 of 2007 where the Applicant had evicted one of

the grandsons of Mukai Kinyenze from parcel No. Nzai/Nziu/803 and that therefore this court was erroneous in holding that parcel No. Nzai/Nziu/803 was ancestral land and there was no basis for holding so.

6. The Applicant's application was opposed by the Respondents based on a replying affidavit sworn on 8<sup>th</sup> October, 2025 by counsel for the Respondents. The Respondents contend that the Applicant's application is an abuse of the process of the court and does not meet the threshold for review of the judgment of 17<sup>th</sup> July, 2025.
7. The Respondents contend that the evidence adduced before the lower court showed that parcel No. Nzai/Nziu/803 was ancestral land and that the evidence of search in respect of parcel Ukia/Utaati/1037 and the court order in respect of Makueni LDTC 21 of 2007 will not change the position of the court.
8. The parties were directed to file written submissions. The Applicant filed her submissions dated 17<sup>th</sup> November, 2025. The Respondents filed their submissions dated 1<sup>st</sup> February, 2026.
9. I have carefully considered the Applicant's application as well as the opposition to the same by the Respondents. I have also considered the submissions by the parties. The only issue for determination is whether the Applicant has met the threshold for a review.
10. The Applicant contends that the court made an erroneous finding that the 2<sup>nd</sup> Respondent was entitled to be registered as co-owner of LR No. Nzai/Nziu/803 when she had stated in her evidence before the lower court that she resided on LR No. Nzai/Nziu/386.
11. An erroneous finding by a court or misapprehension of evidence is not a ground for review. It may be a good ground of appeal. In the case of **National Bank of Kenya Ltd –vs- Njau (1997) KECA 71 (KLR)**, the Court of Appeal stated as follows:

**“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review”.**

12. The second ground upon which the Applicant seeks review is that she discovered new and important evidence which was not within her knowledge. The new evidence according to the Applicant is that contained in an order from the Tribunal at Makueni in LDTC 21 of 2007 in which the Applicant managed to evict one of the grandsons of Mukai Kinyenze from parcel No. Nzai/Nziu/803. The other new evidence according to her is the search in respect of LR No. Ukia/Utaati/1037 which is registered in the name of Martha Kauma Kavai.
13. Martha Kaume Kavai is wife to Kavai Kinyenze who is one of the sons of Mukai Kinyenze. The arguments of the Applicant is that if this evidence would have been placed before the court, the court would have found that the ancestral land of Mukai Kinyenze has its origin in Ukia/Utaati/1037 which is far from parcel Nzai/Nziu/803.
14. What the Applicant claims to be new evidence was within her knowledge at the time of hearing. She was aware that the Respondents had a counterclaim where they were contending that parcel No. Nzai/Nziu/803 was ancestral land. Having been part to LDTC 21 of 2007 she was in a position to table that evidence before the trial court or even make an application to adduce additional evidence on appeal.

15.The registration of Martha Kauma Kavai as owner of LR No. Ukia/Utaati/1037 was within her knowledge because Martha Kauma Kavai is wife of Kavai Kinyenze who was one of the sons of Mukai Kinyenze and a brother to Kilonzo Kinyenze the father in law to the Applicant. The Applicant cannot claim that she did not anticipate the court to trace the family lineage of Mukai Kinyenze for her to have obtained the documents which she now calls discovery of fresh evidence.

16.The Respondents' counterclaim was that they wanted the land to be subdivided amongst the four sons of Mukai Kinyenze. The Applicant had the opportunity to table that evidence before the lower court or seek to adduce it on appeal. I therefore find that there is nothing new which the Applicant discovered which would not have been obtained had she exercised due diligence.

17.From the above analysis, I find that the Applicant's application is devoid of merit. The same is dismissed with no order as to costs as the parties are family members.

It is so ordered

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**HON. E. OBAGA**

**JUDGE**

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 16<sup>TH</sup> DAY OF APRIL, 2026.**

**IN THE PRESENCE OF:**

Ms. Ngumbau for Mr. Mutia for Respondent.

Mr. Muthui for Applicant.

Court assistant – Deodata

ORIGINAL