

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC CASE NO. 493 OF 2011

KAREN **KWAMBOKA**
OKARI.....PLAINTIFF/APPLICANT

VERSUS

ROSELYN **DOLA** **OUKO.....1ST**
DEFENDANT/RESPONDENT

AARON **TAFARI** **OUKO.....2ND**
DEFENDANT/RESPONDENT

ANDREW **OUKO.....3RD**
DEFENDANT/RESPONDENT

RULING

1. Before this court for determination is the notice of motion dated 6th May, 2025 filed by the plaintiff/applicant, and it is expressed to be brought under **Sections 1A,1B,3,3A** and **80** of the **Civil Procedure Act, Order 45 Rules 1,2 & 3** of the **Civil Procedure Rules** seeking the following orders:-

1. Spent.

2. That the honourable court be pleased to grant the firm of Murgor & Murgor Advocates leave to come on record for the plaintiff herein.

3. That the honourable court be pleased to review the judgment and/ or decree made on 30th August, 2018 by the Hon. Lady Justice K. Bor to the effect that 26. (sic) It is just and meet for the plaintiff to get one(1) acre of the suit property and not 2.5

acres that she claims since she only paid Kshs.159,810.00 and not the full purchase price to Jason Ouko (deceased). In surveying the one acre granted to the plaintiff, the surveyor will have to take into consideration the person occupied by the pipeline wayleave and survey the remaining part of the one acre in a manner that the plaintiff can utilize the land in viable manner in compliance with the zoning and development requirements imposed by the Nairobi City County for this area, and increase the acreage due to the applicant to 1.5 acres on account of the Kshs.145,000/- paid to Mr. Jason Ouko by Kenya Pipeline Company Limited for the easement.

4. That the costs of this application be provided for.

2. The application is premised on the grounds on its face. It is further supported by the affidavit of the plaintiff/applicant sworn on even date. The plaintiff/ applicant deposed that there is no evidence that she was paid Kshs.54,000/-, as stated in paragraph 23 of the judgment and to the contrary Mr. Ouko received Kshs.145,000/-. Similarly, she paid Kshs.75,000/- on 25th October, 1991 and continued to pay rates including by cheque as shown in the further affidavit sworn on 29th April, 2013.
3. The plaintiff/ applicant deposed that she is entitled to receive at least 1.5 acres out of LR. no. 3589/6 without any losses owing to

the passage by the pipeline. Further, that she could not obtain the additional evidence to confirm the payment to Mr. Ouko as she was not aware of its existence. The plaintiff/applicant averred that she obtained the same on 2nd October, 2024 and that she visited the site on the suit property where she established the position of the beacons. Further, that considering the easement which was not available at the time of execution of the agreement for sale dated 25th October, 1991, she is entitled to 1.5 acres, and that for this reason it is in the interest of justice and fairness that the application is allowed.

4. The application was opposed by the replying affidavit of the 3rd defendant/respondent sworn on 29th January, 2026. He deposed that the judgment is already effected as the survey was conducted and the suit property was subdivided in accordance with the court's orders, and that the relevant documentation resulting from the same was remitted to the plaintiff/applicant's advocates. Further, that the orders sought in the application are equivalent to an appeal for the finding of facts. That during the hearing, there was no evidence adduced to suggest that plot no 23 and 33 refer to the same parcel and that the record demonstrated that they are entirely different plots.

5. The 3rd defendant/respondent deposed that pursuant to **Order 45**

Rule 1 of the Civil Procedure Rules, there is no evidence or any

error apparent on the face of the record as these issues were conclusively determined by the court. Further, that the unexplained inordinate delay to bring forth this application is fatal. He deposed that the application is equally fatal for the non-inclusion of the judgment and decree which the review is sought against which is a mandatory requirement under **Order 45**. Further, that the proper remedy available to the applicant is through an appeal. The 3rd defendant/respondent deposed that the plaintiff/ applicant has not approached the court with clean hands and she does not merit the discretion of this court.

6. This court directed that the application be canvassed by way of written submissions. None of the parties filed their submissions. Be that as it may, I have considered the pleadings filed, and the issue for determination is *whether the plaintiff/applicant has established sufficient grounds to merit review of the judgment delivered on 30th August 2018*.

7. **Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules** provides as follows:-

“Any person who considers himself aggrieved—

(a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

8. **Order 45, Rule 1** of the **Civil Procedure Rules** provides as follows:

“1. (1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within 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 review of judgment to the court which passed the decree or made the order without unreasonable delay.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by

some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.”

9. From the above provisions, it is clear that while **Section 80 of the Civil Procedure Act** grants the court the power to make orders for review, **Order 45** sets out the jurisdiction and scope of review by hinging review to discovery of new and important matters or evidence, mistake or error on the face of the record, any new or important information that was not available at the time or any other sufficient reason.

10. In the case of **National Bank of Kenya Ltd v Njau [1997] KECA 71 (KLR)**, the Court of Appeal held 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.”

11. In applying the provisions of the law set out above and the authority cited to the instant application, I need to point out that the plaintiff/applicant has not shown the remedy under which the review is sought. The application does not refer to any error apparent on the face of the record, any new or important information and any other sufficient reason which entitles her to 1.5 acres. Assuming that the review is sought based on the grounds that there is new and important information which could not be available at the time as she was not aware that it existed, the plaintiff/applicant contended that there was no evidence that she received Kshs.54,000/-. She supported this argument with the information she obtained on 2nd October, 2024. The 3rd defendant/respondent challenged this argument on the grounds that there was inordinate delay in filing this application, and more particularly is that the judgment has already been executed and new titles issued.
12. I have read the judgment delivered on 30th August, 2018 and I will disagree with the plaintiff/applicant on the first issue. Paragraph 5 states as follows:-

“The plaintiff claims that despite paying the purchase price in full to Jason Ouko, he did not

transfer the suit property to her. She averred that the late Jason Ouko gave her a copy of the approved sub-division plan for LR. No. 3589/6 (IR No. 23229) showing that this land had been subdivided into 16 portions and that the suit property had been given LR No. 3589/33. Her advocates M/s Waruhiu & Muite Advocates wrote to Kenya Pipeline Company Limited on 8/11/1991 stating that she had bought the suit property when this company wished to use part of the suit property for purposes of laying a wayleave on the land. She confirmed that she was paid approximately Kshs. 54,000.00 by Kenya Pipeline Company Limited under the wayleave agreement.

13. From this portion of the judgment, it is evident that the court in pronouncing itself in paragraph 23, did not pick this figure from the air but based the same on what had been pleaded by the plaintiff/applicant. More importantly and I note is the impression within which the application is sought. As it is drafted, it is discernible that the plaintiff/applicant is in fact seeking to appeal the decision of this court which was rendered on 30th August, 2018. In my view, and as I find it, the grounds relied on this application would be perfect for an appeal but not on review as the same has the effect on re-opening the case to litigate afresh issues that have already been dealt with.

14. Secondly, there is inordinate delay in the filing of this application. It is 7 years since judgment was delivered. While the information sought was allegedly obtained in October 2024, the plaintiff/applicant did not find it urgent to move the court then and waited 7 months later to file the instant application.
15. For the reasons stated above, it is my finding that the grounds relied on in this application do not meet the threshold provided under **Order 45 Rule 1** of the **Civil Procedure Rules**. That said, the notice of motion 6th May, 2025 lacks merit and it is hereby dismissed. Each party to bear its own costs.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 22ND DAY OF APRIL, 2026.**

**HON. MBOGO C.G.
JUDGE
22/04/2026.**

In the presence of:

Ms. Benson Agunga - Court assistant

*Ms. Njoki holding brief for Mr. George Ouma for the
Plaintiff/Applicant*

*Ms. Nyaga holding brief for Ms. Asli Osman for the
Defendants/Respondents*