REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA

ELCL JR NO. E002 OF 2025

IN THE MATTER OF AN APPLICATION FOR LEAVE TO COMMENCE PROCEEDINGS IN THE NATURE OF JUDICIAL REVIEW

AND

IN THE MATTER OF APPLICATION FOR JUDICIAL REVIEW UNDER SECTIONS 8 AND 9 OF THE LAW REFORM ACT, CAP. 26 OF THE LAWS OF KENYA

AND

ORDER 53 OF THE CIVIL PROCEDURE RULES

AND

IN THE MATTER OF ARTICLES 10, 23, 40, 47, 50 & 159 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF LAND REGISTRATION ACT, ACT NO. 3 OF 2012

AND

IN THE MATTER OF THE LAND ACT, ACT. NO. 6 OF 2012

AND

IN THE MATTER OF CANCELLATION OF TITLE NUMBER: KIJABE/KIJABE BLOCK 1/1728

BETWEEN

REPUBLIC ……………………………………………………………………… APPLICANT

VERSUS

LAND REGISTRAR NAIVASHA……………………………………… RESPONDENT

AND

ZUPPORAH WANJIRU MWANGI ………………………1ST INTERESTED PARTY

EDWARD KITHINJI M'MWENDA ………………………2ND INTERESTED PARTY

CHINA WU YI COMPANY LIMITED ……………………3RD INTERESTED PARTY

AND

FELISTAS WAMAITHA MWANGI………………………… EX-PARTE APPLICANT

RULING

1. Pursuant to a Ruling delivered on 30th October 2025, in which the Court struck out the Ex-parte Applicant's application seeking leave to institute JR proceedings on the ground that it had been made more than 36 years after the date of the impugned decision, the said Ex-parte Applicant has now, by a Notice of Motion Application dated 10th November 2025, brought an application under the provisions of Order 45 Rules 1 & 2 of the Civil Procedure Rules, 2010, Section 80 of the Civil Procedure Act, and all other enabling provisions of the law, seeking the following orders:
    i. That the Honourable Court be pleased to review and set aside and/or vary its Ruling delivered on the 30th day of October 2025 in the Ex-Parte Applicant's application dated 23rd May 2025 seeking leave to commence Judicial Review proceedings.
    ii. That the Honourable Court be pleased to admit and consider additional evidence contained in the Supporting Affidavit dated 10th November 2025, which evidence was not placed before the court at the time of the initial hearing and determination.
    iii. That the Honourable Court be pleased to allow the Ex-Parte Applicant's application dated 23rd May 2025 seeking leave to commence Judicial Review proceedings.

iv. Such further orders be made as the court may deem just and expedient in the circumstances.

2. The Application was supported by the grounds set out therein, as well as the Supporting Affidavit of equal date, sworn by Felistas Wamaitha Mwangi, the Ex-Parte Applicant herein, who deponed that she had discovered the illegal and fraudulent cancellation of the title to the suit property on 14th May 2025, upon obtaining the Green Card dated 7th May 2025 from the Respondent. That no evidence had been led to the effect prior to obtaining the Green Card on 14th May 2025, she acknowledged/ was aware that the suit property had been registered in the name of the 1st Interested Party on 28th January 1989. That, subsequent to the delivery of the ruling, new and material evidence on the suit property, which had inadvertently not been presented before the Court, had come into her possession.
3. That the said evidence was relevant and material to the just determination of the matter. That, indeed, the records from the Land Adjudication Section indicate that Plot No. 1728 (the suit property herein) is owned by her husband, who paid the registration fee on 11th July 1985. That prior to the issuance of the grant that bequeathed the suit property to her, a search of the said property was a condition precedent to determining that her husband was the owner of the suit property for the purposes of the succession process. The Certificate of Official Search dated 16th June 2015 established that her husband was the owner of the suit property.
4. She deponed that there was an error on the face of the record in the computation of time for filing judicial review proceedings, which ought to have run from 14th May 2025, when she discovered the fraudulent and illegal registration of the suit property to the 1st Interested Party, and not from 28th January 1989, as indicated in the Green Card and ruled by the Honourable Court. That it was therefore inaccurate for the Court to

conclude that the Ex-Parte Applicant should have challenged the registration of the suit property before the expiry of six months running from 28th January 1989, when in fact the property belonged to her husband. It was not logical that, as at 28th January 1989, the suit property had been registered under the name of the 1st Interested Party, yet the Certificate of Official Search dated 16th June 2015 had established that her husband was the owner of the suit property.

5. She contended that at the time of confirmation of the grant, the suit property was registered in her husband's name. Subsequently, it was not feasible for her to conduct regular searches of the suit property when there was no existing threat of dispossession. That whereas the 3rd Interested Party never pleaded that the suit was time-barred, it had only introduced the said issue in its submission; hence it was erroneous for the Court to adopt and apply the same.
6. She thus deposed that it was in the interests of justice and fairness for the ruling delivered on 30th October, 2025, to be reviewed and varied to reflect the true facts of the matter, and that no prejudice shall be suffered by the Respondents and the Interested Parties if the orders sought are granted.
7. In response to and in opposition to the Ex-Parte Applicant's Application, the 3rd Interested Party, through its Replying Affidavit dated 23rd February 2026, sworn by Mary Gatu, its environmental officer, deponed that although the Applicant had brought the present Application on the premise that she had learnt only on 14th May, 2025, when she received the result of a caution of a green card search in her capacity as an Administrator of the Estate of Joseph Mwangi Muiruri, who passed away in the year 2016, that the ownership of the suit property, Title Number: Kijabe/Kijabe Block 1/1728, had been cancelled, and that time should run only from then, this alleged date of discovery of the decision did not

change the date on which the decision by the Registrar of Land was made, being 28th January, 1989.

8. That indeed, both Order 53 (2) of the Civil Procedure Rules 2010 and Section 9 (3) of the Law Reform Act are couched in mandatory terms that leave no discretion for the parties or the Courts to reinterpret when time begins to run for purposes of obtaining leave to apply for orders of Certiorari; hence the hands of the Court and indeed those of the parties were bound. She cited the Court of Appeal in the case of **Wilson Osolo vs John Ojiambo Ochola & AG [1996] KECA 217 (KLR)** to depone that whereas the time limit for doing something under the Civil Procedure Rules could be extended by dint of the provisions of Order 49 of the Civil Procedure Rules, the said procedure could not be availed to extend the time limited by statute in the Law Reform Act.
9. That, in fact, the Court of Appeal had explained that there were no provisions for extending the time to apply for such leave for Certiorari under the Limitation of Actions Act, since the said Act had indicated the items for which leave may be sought and that the order of Certiorari was not among them. That, in any event, even if the Court was minded to exercise its discretion in favour of the Ex-Parte Applicant, she was guilty of laches, hence she had not brought herself within the ambit of the Court exercising its discretion in her favour.
10. That the 3rd Interested Party had taken possession of the suit property and continued to carry out its lawful operations under a lease agreement dated 23rd April, 2018, for a period of 8 years, with the 1st Interested Party and the Registered Proprietor of the suit property. The 3rd Interested Party has been in situ for over 8 years, during which period, the Ex-Parte Applicant had never visited the site.
11. That the provisions of Section 83 (g) of the Law of Succession Act impose on Personal Representatives the obligation to complete the administration of the Estate of a Deceased Person within six months from

the date of the Confirmation of Grant (or such longer period as the Court may allow), and to present to the Court a full and accurate account of the completed administration. That subsequently, since the Certificate of Confirmation of Grant was dated 2nd October, 2017, the Ex-Parte Applicant, as the Administrator of the Estate of Joseph Mwangi Muiruri, ought to have administered the deceased's estate in accordance with her statutory duty by 2nd May, 2018.

12. That indeed, it was the ordinary practice for litigants to attach a copy of an official search with respect to any of the properties of the deceased as part of the inventory of the assets and liabilities of the deceased persons when petitioning for the Grant of Letters of Administration as is required under the provisions of Rule 7 of the Probate and Administration Rules, Legal Notice 104 of 1980.

13. She relied on the provisions of Order 45 Rule 1 of the Civil Procedure Rules to depone that the Applicant had not shown that the discovery of new and important matter or evidence had occurred after the exercise of due diligence prior to the issuance of the decree, and that such evidence had not been within the Applicant's knowledge or could not be produced at the time the decree was passed. She further deponed that, since the Ex-Parte Applicant did not adhere to the timelines provided for under Section 83 (g) of the Law of Succession Act, she could not purport to have exercised due diligence.

14. Had the Ex-Parte Applicant acted with the required due diligence in relation to her duties as the administrator of the Estate of Joseph Mwangi Muiruri, she would have examined the root of title of the suit property, discovered that it had been cancelled by 2018, and taken the necessary steps accordingly. The present matter was deliberated on and determined by the Honourable Court on 30th October, 2025. Accordingly, the Application by the Ex-Parte Applicant dated 10th November, 2025, seeking to set aside the Ruling is unmerited, as the Court is functus officio.

15. She thus prayed that the Ex- Parte's Application be dismissed with costs and that the Court do issue any other orders it deems just and expedient in the circumstances.

16. In a rejoinder, the Ex-Parte Applicant, in her Supplementary Affidavit dated 27th February 2026, asserted that her late husband, Joseph Mwangi Muiruri who died in 1999, and not 2016, was the valid owner of Title No. Kijabe/Kijabe Block 1/1728, registered on 10th May 1988.

17. That a Green Card issued in 2025 contradicts the 1988 Title Deed and a 2015 Official Search. The Applicant claims the Land Registrar has never explained how the 1st Interested Party was registered as the owner or why the original title was cancelled. She cited land adjudication records and a 1985 registration fee receipt as proof of her husband's ownership, labelling the current registration in the name of the 1st interested party as dubious and fraudulent.

18. She deponed that the Court had erred when it calculated the time limit for filing Judicial Review from 28th January 1989, the date of the alleged fraudulent transfer. She argued that time should have been computed from 14th May 2025, the date she had actually discovered the fraud. She contends she could not have sought redress for a secret, illegal act she was unaware of.

19. That the 3rd Interested Party never pleaded that the case was time-barred in their formal court papers, but only raised it during oral submissions. She argues the Court erred by basing its ruling on an issue that was not properly pleaded.

20. She noted that the Respondent had failed to file a Replying Affidavit to support its Grounds of Opposition, meaning there was no sworn evidence to justify the Court's findings.

21. The Applicant argues that her claim is based on Articles 40 and 47 of the Constitution, respectively, on the Right to Property and the right to Fair Administrative Action, and contends that a violation of fundamental

rights—especially involving fraud- was of a continuing nature and could not be strictly time-barred by the Law Reform Act.

22. She asserted that Article 23 of the Constitution allowed the Court to grant Judicial Review orders to remedy Bill of Rights violations, regardless of the procedural timelines in Order 53 of the Civil Procedure Rules.

23. The Respondent and the 1st and 2nd Interested Parties did not participate in the Ex-Parte Applicant's Application herein, which was disposed of by way of written submissions. I shall summarise the submissions as follows:

Ex-Parte Applicant's Submissions.

24. The Ex-Parte Applicant's submissions, dated 27th February 2025, centre on the argument that constitutional imperatives and the discovery of fraud should override strict procedural timelines. The Applicant argued that the documents now presented date back to 1983, 1984, and 2015, and that they had been extremely difficult to trace. She contends that this additional evidence is vital for the court to achieve substantive justice.

25. Relying on Article 22(3)(d) and Article 159(2)(d) of the Constitution, she implores the court to prioritise the rules of natural justice and the right to be heard over unreasonable" procedural technicalities.

26. She asserted that there had been a clear, lawful chain of ownership wherein her late husband was allocated the land in 1984, paid registration fees in 1985, and was registered as the proprietor in 1988. The 2015 Official Search still showed her husband as the owner of the suit property which proved that the 1989 registration of the 1st Interested Party was either backdated, fraudulent, or illegal.

27. She contended that once she demonstrated a lawful acquisition process, the burden shifted to the 1st Interested Party to prove their registration was procedural. Since they offered no evidence, she concluded that their title is ''dubious and fraudulent'' and therefore not protected by law.

28. She submitted that while acknowledging that the Law Reform Act and Order 53 (the 6-month rule) still exist, she argued that these provisions of the law must be read alongside Articles 23, 40 and 47 of the Constitution. That a violation of fundamental rights, especially involving fraud, was of a continuing nature and cannot be strictly time-barred. She relied on the decision in **Communications Commission of Kenya & 5 others v Royal Media Services Ltd & 5 others [2014] KESC 53 (KLR)** to support the argument that administrative actions must adhere to the prerequisites of the Constitution (Article 47) and those national values and principles (Article 10) override narrow procedural technicalities

29. She argued that the Court's reliance on the **Wilson Osolo vs John Ojiambo Ochola & AG [1996] KECA 217 (KLR)** was an error, as that decision belonged to a pre-2010 statutory regime. She maintained that the 2010 Constitution had expanded the court’s power to grant Judicial Review remedies whenever the Bill of Rights was at stake, regardless of statutory limitations.

30. The Applicant reiterated that the Court committed a manifest error by calculating the 6-month limit from 28th January 1989, which was the date of the secret action by the Land Registrar, and insisted that in cases of fraud, time must only begin to run from the date of discovery, which was on the 14th May 2025. She placed reliance on the provisions of Article 40 of the Constitution and the decided case of **Dina Management Ltd v County Government of Mombasa 5 others (Petition 8 (E010 of 2021) 2023KESC30(KLR) (21 April 2023) (Judgment)** to submit that the registration of one as the owner of the land did not sanitize an illegal or irregular process.

31. The Applicant concluded that because the Respondent and Interested Parties failed to explain the illegal cancellation of her husband's title, and because the Constitution protects property rights against fraud, the Court

should exercise its discretion to review the 30th October 2025 ruling and allow the Judicial Review to proceed.

3rd Interested Party's Written Submissions.

32. The 3rd Interested Party's submissions, dated 24th February 2026, focused on the strict legal threshold for review and the Applicant's alleged failure to exercise due diligence. They argue that the Court's previous ruling was correct and that the matter is now legally concluded.

33. The 3rd Interested Party argued that the Applicant had failed to satisfy the requirements of Order 45 Rule 1 of the Civil Procedure Rules. They contended that, for a review to be granted, it was incumbent upon the Applicant to prove that new evidence was discovered after due diligence and could not have been produced at the time of the initial hearing.

34. The 3rd Interested Party noted that the Applicant became the personal representative of her husband's estate in October 2017. Under Section 83(g) of the Law of Succession Act, she had a statutory duty to complete the administration of the estate within six months, by May 2018. They argued that had the Applicant been diligent in her duties as an administrator, she would have discovered the status of the land title in 2017 or 2018. The fact that she waited until 2025 to seek a Green Card search was evidence of negligence, not a new discovery.

35. The 3rd Interested Party asserted that they have been in physical possession of the 4.99-acre property since 2018 (8 years) under a lawful lease. They argued that it was implausible for the Applicant to claim discovery in 2025, given that a large-scale commercial operation had been active on the site for nearly a decade without her intervention or visit. They stated that their own searches in 2018 and 2021 consistently showed the 1st Interested Party as the registered owner since 1989.

36. They reiterated that Judicial Review is governed by strict timelines that the Court cannot waive. That under Order 53 Rule 2 of the Civil Procedure

Rules and Section 9(3) of the Law Reform Act, an application for *Certiorari* must be filed within six months of the decision. They argue this is a statutory limit that the Court has no discretion to extend.

37. They contended that because the Court already ruled on its lack of jurisdiction due to the time bar vide its ruling of 30th October 2025, it had exhausted its power over the matter and had become functus officio and therefore could not reopen the matter simply because new documents had surfaced.

38. The 3rd Interested Party relied on the following authorities to buttress its submission and or position.

i. **Wilson Osolo vs. John Ojiambo Ochola & AG [1996] KECA 217 (KLR),** to establish that there is no provision for the extension of time to apply for an order of Certiorari under the Law Reform Act or the Limitation of Actions Act. The six-month rule is absolute.

ii. **Otieno, Ragot & Company Advocates v National Bank of Kenya Limited [2020] KECA 894 (KLR),** to argue that the power of review under Order 45 cannot be used to circumvent statutory timelines or as a second bite at the cherry, for a party who was not diligent

39. In conclusion, the 3rd Interested Party submitted that the application was an unmerited attempt to revive a finalized matter. They maintained that the Applicant's 37-year delay was fatal to her case and that procedural technicalities do not excuse a total failure to act within statutory limits for nearly four decades. They sought the dismissal of the application, with costs.

Determination.

40. I have considered the Applicant's application herein, the 3rd Interested Party's Replying Affidavit as well as the parties' written submissions,

authorities cited and the applicable law to which I find the issue arising therein for determination as being;

i. Whether there should be a review of the ruling of 30th October 2025.

41. Order 45 Rule 1 of the Civil Procedure Rules provides as follows:-

> *‘’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 review of judgment to the court which passed the decree or made the order without unreasonable delay.”*

42. Section 80 of the Civil Procedure Act 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 judgement to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.’’*

43. From the above provisions, it is clear that whereas Section 80 of the Civil Procedure Act gives the court the power to review its orders, Order 45 Rule 1 of the Civil Procedure Rules sets out the rules which restrict the

grounds upon which an application for review may be made. These grounds include;

- i. *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/her at the time when the decree was passed or the order made or;*
- ii. *on account of some mistake or error apparent on the face of the record, or*
- iii. *for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without un-reasonable delay.*

44. The main grounds for Review are therefore: discovery of new and important matter or evidence; mistake or error apparent on the face of the record; or for any other sufficient reason, and most importantly, the application has to be made without unreasonable delay.

45. In this case, the reason given by the Applicant in her Application seeking to have the Ruling and Order of 30th October 2025 reviewed and set aside was based on the discovery of new and important evidence and an alleged error on the face of the record regarding how the court calculated time limits.

46. In her application, the Applicant claimed that after the delivery of the impugned ruling, she had come into possession of new and important evidence not available at the time of the hearing. She had obtained a Green Card on 14th May 2025, which revealed for the first time that the title to the property had been illegally and fraudulently cancelled and re-registered in 1989 to the 1st Interested Party. She also argued that additional documents, dating back to 1983, 1984, and 2015, including land adjudication records and a 1985 registration fee receipt, proved her husband's lawful ownership. She further argued that tracing these documents was a herculean task due to their age and her advanced age of 77 years.

47. The Applicant then argued that there had been an error on the face of the Record on the computation of time, stating that the Court made a manifest legal error in its calculation of the 6-month statutory deadline for Judicial Review. She contended that the Court erroneously calculated time from 28th January 1989, the date the transfer occurred, arguing that time should have begun to run from 14th May 2025, the date she actually discovered the alleged fraud. She pointed out a contradiction in the 2015 Official Search, which showed her husband as the owner, yet the Registry later claimed the property was transferred in 1989. She argues that the Court failed to account for this discrepancy.

48. The Applicant also asserted that the Court relied on an outdated decision in **Wilson Osolo vs John Ojiambo Ochola & AG [1996] KECA 217 (KLR),** which belonged to a pre-2010 constitutional era, arguing that under the 2010 Constitution in Articles 23 and 47, administrative actions involving fraud or violations of the Bill of Rights (Right to Property) were continuing in nature and cannot be strictly time-barred by the Law Reform Act.

49. The Applicant then claimed that the Court erred by striking out the matter on the ground of being time-barred when the issue had not been formally pleaded by the 3rd Interested Party in their replying affidavits, but had only been introduced during oral submissions, which she characterized as a trial by ambush.

50. Lastly, the Applicant argued that the registration of the 1st Interested Party was dubious and fraudulent, and that under Article 159(2)(d) of the Constitution, the Court should prioritise substantive justice and her right to property over procedural technicalities and timelines.

51. In response, the 3rd Interested party's stand was that the Court was now *functus officio*, having already performed its duty, and that the statutory timelines are absolute. Citing the provisions of Order 53 Rule 2 of the Civil Procedure Rules and Section 9(3) of the Law Reform Act, the

3rd Interested Party argued that the 6-month limit for the writ of *Certiorari* was mandatory and the Court had no discretion to extend it, regardless of when the Applicant discovered the act.

52. That under Order 45 Rule 1, of the Civil Procedure Rules, a review required proof that new evidence could not have been found with due diligence. As an Administrator confirmed in 2017, the Applicant had a statutory duty under the Law of Succession Act to verify the estate's assets within 6 months. Had she been diligent, she would have discovered the title status by 2018.

53. That they had been in physical possession of the land for over 8 years under a valid lease wherein there had been no attempt by the Applicant to visit the suit land. That she was therefore guilty of laches in asserting a claim. They reaffirmed that decision in **Wilson Osolo** (supra) to the effect that while the Civil Procedure Rules allow for time extensions in some areas, they cannot override the specific time limits set by the Law Reform Act.

54. It is to be noted that in her application dated the 23rd May, 2025, where the Applicant sought an order of Certiorari to bring into this Honourable Court for quashing the decision of the Respondent cancelling the Title No. Kijabe/Kijabe Block 1/1728, the Applicant had founded the said application on the provisions of the Law Reform Act and Order 53 Rule 1 (1) and (2) of the Civil Procedure Rules and therefore she was bound to comply with the procedure set out under Section 9 (3) of the Law Reform Act and Order 53 Rule 2 to file her application for leave for an order of certiorari to remove the judgment, order, decree or other proceedings for the purpose of its being quashed, within the six months period.

55. Based on the stringent legal principles governing Applications for Review, the Applicant has now brought the present application, strategically framing her arguments to pivot from Administrative Law to Constitutional Law.

56. The Court of Appeal in **Civil Appeal No. 2111 of 1996, National Bank of Kenya -vs- Ndungu Njau,** remarked on review applications 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 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 proceed on an incorrect expansion of the law."*

57. It is trite that for a Review under Order 45 Rule 1 of the Civil Procedure Rules, to succeed based on the discovery of new evidence, the Applicant must prove she exercised due diligence. It is not in contention that the Applicant was appointed Administrator of her husband's estate in 2017, but waited until 2025 to perform a search on a primary estate asset. Indeed, under Section 83(g) of the Law of Succession, she, as an administrator, had a statutory duty to produce a full and accurate inventory of the estate's assets and liabilities. To fulfil this duty, she, as a diligent administrator, had been required to verify the titles of all properties belonging to the deceased. Had she conducted a search in 2017/2018 (as required by law to confirm the grant), she would have discovered the 1989 transfer then. Her failure to do so for 8 years thus makes the ''newly discovered evidence'' appear to have been belatedly sought.

58. Secondly, the new evidence in the form of a "Green Card" obtained in May 2025, I find, did not constitute "newly discovered evidence" in the eyes of the law as it is a public document held by the Land Registrar that was available for inspection at any point over the last 36 years. The Applicant's failure to apply for it sooner is a failure of diligence, not a lack of availability. The law does not reward a party for its own supine negligence.

59. Discovery does not just happen at the Land Registry; it also happens on the ground. The 3rd Interested Party has been in physical possession of the property (4.99 acres) since 2018, conducting quarrying and commercial operations. By failing to visit the site or notice a full-scale quarrying operation, and by remaining unaware of a third party occupying and excavating nearly five acres of the estate's land for eight years, the Applicant forfeited any claim to being "diligent."

60. It must be noted that a Review is not an appeal. It is not meant to give a party a "second bite at the cherry" because they realised, they forgot to attach a document. The Court correctly found that the 6-month limit in the Law Reform Act is a jurisdictional wall. Bringing the same evidence that was "publicly available" all along does not magically confer jurisdiction back to the Court.

61. Discovery of new evidence" requires that the evidence was hidden, not merely ignored. The 1989 transfer was a matter of public record, the quarrying was a matter of public view, and the 2017 Administration Grant was a matter of legal duty; therefore, the Applicant did not "discover" evidence; she simply woke up too late.

62. On the second aspect of there being an error on the face of the record, the Applicant argued that the Court had made a manifest legal error in its calculation of the 6-month statutory deadline for Judicial Review when it calculated time from 28th January 1989, the date the transfer occurred, instead of from the time when the Applicant discovered the alleged fraud on 14th May 2025. That, the Court relied on an outdated pre-2010 constitutional decision in **Wilson Osolo** (supra) to dismiss her application.

63. The 'error apparent on the face of the record' must be "self-evident" and not require a lengthy process of reasoning or external evidence to uncover. In her argument, the Applicant emphasised that she held a Certificate of Official Search dated 16th June 2015, which establishes her

husband as the owner of the suit property; however, the Court's ruling was based on a Green Card indicating that the suit property had been transferred to a third party on 28th January 1989. The Court followed the literal wording of the statute. Following the law as written is rarely considered an error apparent, even if the result seems harsh. If the Applicant failed to present the 2015 search or the land adjudication records at the initial hearing, it cannot be said that the Judge erred by not considering them. A misinterpretation of law or a wrong conclusion from facts is an appealable error, not an error apparent on the face of the record for the purpose of a Review. The Court ruled on a "time-bar" issue not formally pleaded in a Replying Affidavit.

64. In **Nyamogo & Nyamogo v Kogo (2001) EA 170**, the Court of Appeal, while commenting on an error apparent on the face of the record, observed as follows:

> *"…. An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of un definitiveness inherent in its very nature and it must be determined judicially on the facts of each case. There is a real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was possible. Mere error or wrong view is certainly no ground for review though it may be one for appeal."*

65. Lastly, it must be remembered that while there was a change in the 2010 Constitution, the specific wording of the Law Reform Act has not changed and therefore the precedent in **Wilson Osolo vs John Ojiambo**

Ochola & AG [1996] KECA 217 (KLR) remains good law for which the Applicant should not confuse the Civil Procedure Rules with the Law Reform Act.

66. In the end, I find that no reason has been given by the Applicant to warrant a review of the order issued on 30th October 2025, since the said order was well-grounded on the correct position of the law. The Applicant's Application dated 10th November 2025 is dismissed with costs, for lack of merit.

Dated and delivered via Microsoft Teams at Naivasha this 16th day of April 2026.

M.C. OUNDO

ENVIRONMENT & LAND COURT – JUDGE