



REPUBLIC OF KENYA



**KENYA LAW**  
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**Gituro v Njeri; Thuo (Interested Party) (Environment and Land Appeal E088 of 2021) [2026] KEELC 2447 (KLR) (28 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2447 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND APPEAL E088 OF 2021**

**JM ONYANGO, J**

**APRIL 28, 2026**

**BETWEEN**

**GITURO KAHUGI GITURO ..... APPELLANT**

**AND**

**NANCY WAIHERA NJERI ..... RESPONDENT**

**AND**

**JOYCE WANGARI THUO ..... INTERESTED PARTY**

**RULING**

1. This ruling arises from the Applicant's Notice of Motion dated 22<sup>nd</sup> September 2025 in which the Applicant returns to this Court seeking the following Orders:
  1. Spent...
  2. That the Honourable Court be pleased to vary, amend and review its Orders issued on 23<sup>rd</sup> May 2022, in order to make executable the Declarations of the Honourable Court in the Judgment herein, dated 23<sup>rd</sup> May 2022.
  3. That this Honourable Court issues an order directing the Deputy Registrar of this Honourable Court to execute any and all Forms necessary to give effect to the Judgment and Orders in the matter herein.
  4. That the costs of this application be in the cause.
2. The application rests upon the grounds set forth on its face and is supported by the affidavit of Gituro Kahugi Gituro sworn on even date.



3. The Applicant depones that on 23<sup>rd</sup> May 2022 this Honourable Court decreed that the Land Registrar determine the boundary dispute between the parcels of land known as Githunguri/Kanjai/2916 and Githuguti/Kanjai/2914 (hereinafter ‘the suit properties’).
4. The Applicant asserts that the Land Registrar and the County Surveyor of Kiambu County attended a site visit on 15<sup>th</sup> April 2025 in the presence of all parties, the area chief and village elders.
5. The Applicant further depones that on 23<sup>rd</sup> May 2025, the Land Registrar Kiambu rendered a report in which it was recommended that the subdivision of Githunguri/Kanjai/255 into five portions, namely Githunguri/Kanjai/2913 to Githunguri/Kanjai/2917 be reinstated in accordance with Succession Cause No. 504 of 1987. The report further recommended that all acreage be computed afresh from a ground survey so as to accord with the areas reflected in the respective title deeds, and that both the mutation forms and the Registry Index Map (hereinafter ‘RIM’) be corrected to bring them in conformity with the said Succession Cause.
6. It is the Applicants assertion that 80 days after the Land Registrar’s report, no objections were raised by any of the parties and on 19<sup>th</sup> August 2025 the Land Registrar together with the County Surveyor Kiambu County proceeded to fix and ascertain the boundaries on the land in accordance with the report.
7. The Applicant depones that the County Surveyor of Kiambu County has set in motion the process of amending the mutation forms and the Registry Index Map in accordance with the recommendations of the Land Registrar’s report, but that the process now stands arrested for want of execution. The mutation, it is said, calls for the signatures of both parties, and the Respondent has withheld that assent.
8. Owing to this impediment, the Applicant turns to this Court, beseeching the court to review its decree of 23<sup>rd</sup> May 2025 to authorize the Deputy Registrar to append his signature in place of the Respondent, so that the boundaries, as ascertained may be duly reflected.
9. The Respondent stands in opposition to the application vide the Replying Affidavit of Nancy Waithera Njeri sworn on 16<sup>th</sup> October 2025.
10. The Respondent contends that the application is frivolous, vexatious and an abuse of the court process. That the same was filed with the sole intention of misleading this Honourable Court.
11. She contends that the resurvey and re-subdivision by the officers of the Land Registry was conducted in a manner that was prejudicial and opaque ,in breach of the court’s directions.
12. The Respondent further depones that the conduct of the surveyor fell short of the impartiality contemplated under section 18 of the *Land Registration Act*, in that, on the day of the site visit, the Surveyor is said to have taken instructions from the son of the proprietor of parcel 2917, while disregarding the objections raised by the Respondent and the administrators of the estate.
13. The Respondent contends that the instant application is a blatant attempt by the Applicant to distract the Court from the biased and illegal process by the Surveyor and to mislead this court towards the adoption of a report that is marred by irregularities.
14. The Respondent thus seeks the dismissal of the application with costs.
15. The Applicant filed a Supplementary Affidavit sworn on 15<sup>th</sup> December 2025 refuting the Respondent’s assertions. The Applicant contends that the Respondent has failed to produce any evidence that confirms their purported objection to the re-survey process or the Land Registrar’s



Report. The Applicant seeks that the application be allowed so as to give life and effect to the Judgment of this Honourable Court of 23<sup>rd</sup> May 2022.

16. The application was canvassed by way of written submissions filed by both parties which I have given due consideration.

### **Issues for Determination**

17. Having examined the application, the Replying Affidavit in opposition thereto, the rival submissions and having considered the relevant authorities, the single issue that emerges for determination is: whether the Court should vary, amend, and review its Orders issued on 23<sup>rd</sup> May 2022

### **Analysis and Determination**

18. The starting point must be the law that governs the Court's power of review.

19. 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 judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

20. This provision is the wellspring of the Court's power for review. The discretion it bestows is no idle; it is a disciplined trust, to be exercised judicially, and always within the firm boundaries marked out by the Rules.

21. Order 45 of the Civil Procedure Rules gives that discipline its shape. It does not merely restate the Court's power. It delineates the narrow corridor within which that power may properly be invoked. Order 45 Rule 1 provides, in material part, that a person aggrieved by a decree or order may apply for review on any of the following grounds:

- “(i) That he has discovered new evidence which after the exercise of due diligence was not within his knowledge or was not available at the time the order was made;
- (ii) That there was a mistake or error apparent on the face of the record; and
- (iii) That there is sufficient reason to warrant the review sought and that the application had been made timeously.”

22. The statute donates the power; the Rules stand as its vigilant sentinels. They do not enlarge it. They restrain it. The jurisdiction is thus not an avenue for rehearing the matter, nor is it a device by which concluded matters can be revived. It is a narrow and disciplined power, reserved for the correction of manifest error, for the admission of material that due diligence could not earlier procure, or for such sufficient reason as, in the interests of justice, calls for the Court's intervention.

23. In the instant application, the Applicant submits that the refusal to sign the mutation by the Respondent could not have been foreseen at the time of judgment.



24. Noticeably, no complaint is raised of any mistake or error apparent on the face of the record. The Applicant does not identify any patent defect, omission, or self-evident inconsistency in the Judgment of this Court or in the Orders issued therefrom. Neither is it suggested that the Court misdirected itself in law or fact, or that anything was inadvertently left out which the record, on its own terms, discloses. In substance, the integrity of the Judgment and Orders remains unchallenged.
25. The grievance, though promptly brought before the Court, is not directed at any error in the terms of the Orders issued, but at the refusal of a party to cooperate in the administrative steps necessary to give effect to those Orders.
26. That distinction is not without consequence. It draws a line between the correction of judicial determinations, which is the province of review, and the enforcement of concluded determinations, which ordinarily lies within the realm of execution.
27. In construing the ambit of the Court’s review jurisdiction, particularly the residual head of “any other sufficient reason,” the Court has not spoken with a single voice as to its precise scope. In *Wangechi Kimita v Wakibiru Mutahi* [1985] eKLR the Court stated as follows:

“I see no reason why any other sufficient reason need be analogous with the other grounds in the order because clearly section 80 of the *Civil Procedure Act* confers an unfettered right to apply for a review and so the words ‘for any other sufficient reason’ need not be analogous with the other grounds specified in the order...”
28. Notwithstanding the apparent breadth of the expression “sufficient reason,” it is settled that the jurisdiction of review remains an exceptional one. It is not an avenue for the re-opening of concluded matters under the guise of discretion, nor is it a surrogate appeal.
29. The Court’s power to review though existent, is circumscribed by the need to preserve the finality of its own determinations, save in those limited instances where the statutory thresholds are properly met.
30. The Applicant submits that the Respondent has withheld his signature on the mutation forms, in a manner calculated to frustrate the implementation of the Court’s decree. It is further contended that, had the Respondent appended his signature as required, the dispute, as already determined by this Court, would have been brought to its practical and intended conclusion.
31. Additionally, the Applicant submits that if the Respondent had any grievance with the Land Registrar’s report as alleged, the proper course would have been to lodge a complaint in accordance with section 18 of the *Land Registration Act* and Regulation 40 of the *Land Registration Act* (General) Regulations 2017.
32. The Respondent, however, takes a diametrically opposed view. It is contended that the circumstance now relied upon by the Applicant does not constitute new and important matter within the meaning of Order 45, nor does it amount, in any legal sense, to “sufficient reason.”
33. It is the Respondent’s submission, that the application is an exercise in legal repackaging, seeking to elevate a complaint as to implementation and alleged non-compliance into a ground for review. It is further urged that what is presented is neither unforeseen nor incapable of anticipation in the legal process, and therefore falls short of the strict threshold required to invoke the Court’s review jurisdiction.
34. The question that then arises is whether such circumstances, taken at their highest, amount to “sufficient reason” within the meaning of Order 45.



35. The Court of Appeal in *Ndungu Njau v National Bank of Kenya Limited* [2008] eKLR reiterated the limited nature of review jurisdiction and warned against its use as a surrogate for enforcement proceedings or an indirect appeal. In that regard, the Court stated:

“Being one of the orders that the judge made and as the appellant’s counsel says it was not obeyed, was there no action he would have taken to prompt the other party take action except to wait to take it up in an application for review? Certainly looking at Order XLIV Rule 1 of the Civil Procedure Rules this is not a ground for an application for review.”

36. The effect of the foregoing dictum is clear. The Court does not lose sight of the practical frustration that may arise where a party, against whom an order is made, declines to cooperate in its implementation. Such conduct, if established, may well impede the smooth translation of judicial pronouncements into practical effect. That circumstance, however inconvenient, does not in and of itself alter the juridical character of the remedy sought.

37. Non-compliance with, or resistance to, the implementation of an order of the Court does not, without more, translate into a ground for review.

38. The jurisdiction under Order 45 of the Civil Procedure Rules is not designed to police obedience to decrees, nor to furnish a remedial pathway where execution processes may be invoked. It is concerned with the integrity of the decision-making process, not the subsequent conduct of parties in relation to the decree.

39. The Court must therefore be careful not to allow the jurisdiction of review to be drawn into terrain properly occupied by enforcement mechanisms under the Civil Procedure framework.

40. Once a decree has been pronounced, the Court becomes *functus officio* in respect of its merits, save only for the narrowly circumscribed exceptions. To permit parties to re-characterise difficulties in execution as “sufficient reason” would be to unsettle the finality of judgments and blur the settled boundary between review and enforcement. That is precisely the mischief the Court of Appeal cautioned against in *Ndungu Njau* (*Supra*).

41. The Applicant’s grievance is, in substance, a complaint as to the manner in which the decree is being implemented, not a defect in the decree itself. Such a grievance, however framed, falls outside the established confines of “sufficient reason” and cannot sustain a review.

42. Accordingly, the Court finds that the Applicant has not brought himself within any of the statutory thresholds under Order 45 of the Civil Procedure Rules.

43. The Notice of Motion dated 22<sup>nd</sup> September 2025 is hereby dismissed with costs.

44. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY, AT THIKA THIS 28<sup>TH</sup> DAY OF APRIL 2026.**

.....

**J. M. ONYANGO**

**JUDGE**

In the presence of:

Mr Wambira for the Appellant/Applicant

Mr Swaka for the Respondent



N/A for the Interested Party

Court Assistant: Hinga

