

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. 197 OF 2018

PARSIMEI MARAKOT (suing as the duly appointed legal Administrator to
the estate of NOONDASATI MAKALTO MAKALO
(Deceased).....

.....PLAINTIFF/APPLICANT

VERSUS

LIARKET OLE SILANKEI LOOLAMALA.....1ST

DEFENDANT/RESPONDENT LAND REGISTRAR, KAJIADO.....

2ND DEFENDANT/RESPONDENT THE ATTORNEY GENERAL.....

...3RD DEFENDANT/RESPONDENT

RULING

(In respect of the Notice of Motion dated 28th January 2026 seeks a review and variation of the Judgment delivered by Honorable M.N. Gicheru at the Kajiado Environment and Land Court on 3rd March 2022)

Introduction

1. The matter before this Court is the Notice of Motion dated **28th January 2026**. The Application is brought by **Parsimei Makarot**, the Plaintiff/Applicant herein, who sues as the duly appointed legal Administrator to the estate of **Noondasati Makalto Makalo** (the Deceased).
2. The Application is expressed to be brought under **Order 45 Rule 1** of the **Civil Procedure Rules, 2010**, and **Sections 80, 1A, 1B, and 3A** of the **Civil Procedure Act, Cap 21 Laws of Kenya**. It seeks a review and variation of the Judgment delivered by Honorable M.N. Gicheru at the Kajiado Environment and Land Court on **3rd March 2022**.
3. The specific orders sought in the Application are set out verbatim as follows:

1. SPENT

2. **THAT** this Honorable Court be pleased to review its judgement delivered on 3rd March 2022 based on the direction by this Honourable court that the Title Deed to the entire Suit Land L.R. KAJIADO/DALALEKUTUK/3019, 9510 and 9511 revert to the name of Noondasati Makalto Makalo which is impossible to implement ab intio since the said Suit Property has never been registered in the name of the deceased in the first place.

3. **THAT** the part of the judgement directing the Land Registrar to register the Suit Property L.R. KAJIADO/DALALEKUTUK/3019, 9510 and 9511 in the name of the deceased, Noondasati Makalto Makalo be varied.

4. **THAT** costs be in the cause.

4. The Application is grounded on the contention that the Judgment contains an **error apparent on the face of the record**. The Applicant asserts that the Court's direction for the Suit Property to "revert" to the Deceased is factually and legally impossible to implement because the property was never registered in her name during her lifetime. The Applicant maintains that the Land Registrar cannot lawfully effect an

order to "revert" property to a party with no prior registered legal interest.

5. The **1st Defendant/Respondent, Liarket Ole Silankei Loolamala**, opposes the Application through **Grounds of Opposition** dated **March 2026**. The Respondent contends, *inter alia*, that this Court lacks jurisdiction to entertain the application, that the delay in filing is inordinate, and that the Applicant has failed to meet the statutory threshold for review.

Directions

6. The application was canvassed by way of written submissions, the submissions of which have been duly considered in the writing of this ruling.

Issues for Determination

7. This court finds that the only issue that crystallizes for determination is whether the applicant has met the legal threshold for review of the impugned judgement.

Analysis and Determination

8. The substantive right of review is anchored in **Section 80** of the **Civil Procedure Act (Cap 21)**, which provides that any person aggrieved by

a decree or order may apply for a review of the judgment to the court which passed the decree or made the order. This right is operationalized by **Order 45 Rule 1** of the **Civil Procedure Rules (2010)**, which stipulates that a review may be sought on the discovery of new and important matter or evidence, on account of some mistake or error apparent on the face of the record, or for any other sufficient reason.

9. The Applicant herein seeks a review based on two primary grounds: an error apparent on the face of the record and the impossibility of execution.
10. The Applicant contends that the Court's direction for the suit land titles to "revert" to the name of **Noondasati Makalto Makalo** constitutes an error apparent on the face of the record because the deceased was never registered as proprietor of the properties in question.
11. Regarding the nature of such an error, the Applicant relies on the case of *Republic v Public Procurement Administrative Review Board & 2 Others; Pelt Security Services Limited (Interested Party) [2020] eKLR*, where the High Court held that:

"an error apparent on the face of the record must be self-evident, manifest and should not require an elaborate argument to establish."

12. The Applicant further argues that in the case of County Government of Mombasa v Kooba Kenya Limited [2019] eKLR, the court held that a review is permissible:

"where there is a clear and obvious error on the face of the record which, if not corrected, would lead to an unjust or impractical result."

13. Conversely, the 1st Defendant/Respondent argues that no such error exists and that correcting the judgment as prayed would require the Court to interrogate the evidence, which exceeds the scope of the "Slip Rule" or review jurisdiction.

14. The 1st Respondent cites Grace Akinyi V Gladys Kemunto Obiri & Another (2016) eKLR, asserting that:

"the error or omission must be self-evident and should not require arguments to be established."

15. Upon evaluation, the Court finds that the error is indeed manifest and does not require arguments to be established. The use of the term

"revert" presupposes a prior registered state. To "revert" a title to someone who never held it is a mechanical and factual impossibility. Substituting this with the word "register" does not alter the Court's substantive finding that the estate is the rightful owner; rather, it gives effect to the clear intention of the judgment.

16. The Applicant further argues that the Land Registrar's inability to execute the decree as currently worded constitutes a "sufficient reason" for review.

17. In Wangechi Kimita & Another v. Mutahi Wakibiru [1985] KECA 73 (KLR), the Court of Appeal held that:

"the phrase 'for any other sufficient reason' need not be analogous with the other grounds specified in the Order because clearly Section 80 of the Civil Procedure Act confers an unfettered right to apply for a review."

18. This is supported by Benjoh Amalgamated Limited & Another v Kenya Commercial Bank Limited [2018] eKLR, which affirmed:

"courts retain inherent jurisdiction to revisit their decisions in order to prevent injustice or hardship arising from their orders."

19. The Court finds that the inability to enforce a final decree due to a terminological mismatch is a "sufficient reason" to justify a review. A dispute is not truly resolved if the final decree is unenforceable.

20. The Respondent argues that the Application, filed nearly four years after the judgment, is inordinately delayed. They cite *Ndiga vs Said (Misc Civil case E032 of 2022) (2024) KEHC 964 (KLR 31 January 2024 ruling)*:

"As to whether this application has been filed after undue delay, this court is of the considered view that the issue of delay depends on circumstances of each case. It is therefore, for the applicant to explain the special circumstances of his case. In this case, no attempt was made at pointing out the circumstances leading to the filing of this application almost 1 ½ years after the judgement of the court. This period is rather long and constitutes undue delay in the absence of any explanation of the special circumstances by the applicant'."

21. The Applicant however, clarifies that the need for review only became apparent when the Land Registrar rejected the decree during the

execution phase. In the special circumstances of this case, the delay cannot therefore be said to be inordinate.

22. The court agrees with the Applicants' submissions on the unique circumstances of this case. The clock for "unreasonable delay" then must be viewed in light of the discovery of the impossibility of execution of the decree as issued by the court.

23. The court finds and holds that the Applicant has demonstrated that a manifest error exists on the face of the record that renders the judgment incapable of implementation. The court retains jurisdiction to undertake incidental proceedings, such as review, to bring litigation to an end. As held in *Telkom Kenya Limited VS. John Ochanda [2014]*

eKLR:

"The doctrine [functus officio] is not to be understood to bar any engagement by a court with a case that it has already decided or pronounced itself on. What it does bar; is a merit-based decisional re-engagement..."

24. Since the Applicant is not seeking a merit-based re-engagement with the case, but a corrective variation to ensure the decree is executable, the threshold for review has been met.

25.The Court finds the Application dated **28th January 2026** merited.

The Judgment dated **3rd March 2022** is hereby reviewed and varied by substituting the word "**revert**" with the word "**register**" to enable the **Land Registrar, Kajiado**, to effect the registration of **L.R. KAJIADO/DALALEKUTUK/3019, 9510, and 9511** in the name of the deceased, **Noondasati Makalto Makalo**.

26.An amended decree will accordingly be issued with the above variation.

It is so ordered.

Dated, Signed and Delivered Virtually this 30th Day of April, 2026.

M.D. MWANGI
JUDGE

In the virtual presence of:

Mr. Onyonka h/b for Mr. Miencha for the Plaintiff/Applicant

N/A by the Defendants

Court Assistant: Alex

M.D. MWANGI
JUDGE

ORIGINAL FILE COPY