Matoya & another v Attorney General & 4 others (Environment and Land Case E001 of 2023) [2026] KEELC 2318 (KLR) (23 April 2026) (Ruling)

Neutral citation: [2026] KEELC 2318 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISII

ENVIRONMENT AND LAND CASE E001 OF 2023

AA OMOLLO, J

APRIL 23, 2026

BETWEEN

BEATRICE MATOYA ..... 1ST PLAINTIFF

TABITHA BONARERI MATOYA ..... 2ND PLAINTIFF

AND

THE HON ATTORNEY GENERAL ..... 1ST DEFENDANT

COMMISSIONER OF LANDS ..... 2ND DEFENDANT

LAND REGISTRAR KISII ..... 3RD DEFENDANT

HENRY MANYANGE MATOYA ALIAS HENRY MATOYA MANYANGE ..... 4TH DEFENDANT

JAMES MANYANGE OBIRI ..... 5TH DEFENDANT

RULING

1. The Plaintiffs / Applicant filed the application dated 2nd December 2025 praying for orders: -

    a. Relief to the Applications who have been put to gruelling battle that has cost them one member of the Family, the late Eliud Matoya, our parents' father's pride.

    b. The matter to be concluded by the Current ELC Court Judge IS already transferred from this station and who, though seems to have contradicted himself in the ruling dated 19th November, 2025, has actually played an extraordinary role in bringing this matter to its final conclusion.

    c. Conclusion of this matter with this judge will cure the cancer of misrepresentation of facts by seasoned defence lawyers in kisii law courts who cause such untold suffering not only to the judges but also judiical servgice commission.

2. The Application is premised on several grounds listed on its face inter alia:-

   a. That there is Apparent Error on the Face of Record issuing from Paragraph 10 -21 which if the Honourable Judge had brought into account the already documents, rulings, and judgment in file therefore stand irrelevant.

   b. That the 19th November 2025 ruling blatantly interferes with the findings of the ultimate arbitor's ruling which ruling issued from investigation conducted under the proposed requirement to extract original; records from all land related departments; to make the conclusion and recommendation of their ruling dated september, 2025 and also which recommendations i believe nobody can be able to challenged successfully even at the supreme court.

   c. That Paragraph 14 – 16 of the Ruling dated 19th November 2025 by Munyao J, firstly is in contradiction of his other Ruling dated 1st March 2023 – paragraph 11 where the court dismissed the attorney generals claim that the land had reverted to the government and the judge responded "This is because there has not been any demonstration that the land is now belong used by the Public".

   d. That the Honourable Judge's uncalled for findings insulates the strong bent desire of "interested parties" who have not spared any effort to deprive us of our inherent analienable inheritance in l. r. 1436/278 superficially clothed in kisii block 111/140 yet on the map of the physical planner, it is marked as 287; to suggest that it has not been allocated to anyone or demonstration that the land is now being used by public.

   e. that the two orders of status quo are an abuse of cpourt proces, bad laws, to sttate the lease the ruling dated 28th october 2023 and 19th november 2025 made by this court; coming after the national land commission's ruling dated september 2025 which are bad in law be lifted; are securing illegal tenants, and enabled one of the illegal tenants to demolish the inner wall of the main front shop.

   f. That these grounds therefore begs the Environment and Land Court in Kisii to be awake to the law and conclude this matter to save the judiciary from the same issue.

3. The Application is also premised on the supporting affidavit sworn by the 1st Applicant Beatrice Matoya on 2.12.2025. She deposed that the process of applying for renewal of lease vide letter dated 23rd November 2012 from the Commissioner of Land was never bypassed as evidenced by their document at page 30-49.

4. The Applicants aver for record purposes (That for record purposes and clarifying the misrepresentation of material; facts that have derailed the conclusion of this matter in all progressive suits for revocation of the fraudelent confrimation on grant dated 2nd may 2022, record documents were atatched to the 1st plaintiff's letetr dated 21st november 2025. The same is also attached to these pleadings EXHIBIT NO. 2"

5. She states that she is informed (that i am well infromed that the national land commission is the final arbitor as far as land ownership in kenya is concerned and whose rulings and recommendations take legal effect.

6. That I am reliably informed that Munyao J. Has changed Station as was with all other judges in the chain of files that inadequately scratched on the issues touching the Suit Property LR. NO. 1436/287

now referenced as Kisii Town / Block II/140 as held out in exhibits nos. 4, 5, 6, 7; so, the desire for him to be the last to conclude the already concluded finding of the fraud before he leaves station.

7. The application was opposed by the 4th and 5th Defendants vide their grounds of opposition dated 17th February, 2026 they plead inter alia:-

   a. That the said application terribly fails to meet the threshold for setting aside the Ruling of this Honourable Court delivered on 19th November, 2025

   b. That the Application violates the principle of finality in litigation.

   c. That an application for setting aside court orders is not meant to afford a losing party like the 1st Plaintiff herein with a chance to re-litigate the matter in the hope of a better outcome.

   d. That this Honourable Court lacks jurisdiction to hear an appeal against its own ruling.

   e. That the said Application is not only mischievous but an also attempt to circumvent and bypass the orders of this Honourable Court made on 19th November 2025.

   f. That the 1st Plaintiff application is therefore frivolus, vexatious, devoid of merit and an abuse of the Court process and therefore it should be dismissed with costs.

8. The application was heard on 25.2.2026 through oral submissions of the Plaintiffs and the 4th and 5th Defendants. The 1st Applicant submits that the National Land Commissions concluded the matter but the 4th Defendant filed an application which resulted in the Ruling dated 19.11.2025. She is asking that the Ruling be reviewed so the Court can grant her prayer 4 that the National Land Commissions decisions be adopted.

9. She avers that there is an error at paragraph 14 of the impugned ruling since she had undertaken the process of renewal of the lease. She referred the court to pages 30 – 49 as containing documents following up on the renewal. She asserted that the lease was renewed for a period of sixty-six (66) years effective 1.5.2000

10. The Applicants submits the Judge did not take into consideration the letter dated 23.11.2012 when writing the ruling. She urged the court to grant the orders sought and adopt the National Land Commissions decision.

11. The Defendants through their counsel Mr. Mbaka submitted that the application does not meet the threshold of review application. He contended that this court cannot sit on appeal of its own decision / ruling. The Respondents submit the Plaintiff has attached eight (8) documents which have not been signed / sealed as required under Rule 9 of the *Oaths and Statutory Declarations Act*. That the said documents should be expunged.

12. It is their submissions that without proper annextures the supporting affidavit cannot stand on its own. He cited the case of Rachier Suri =vs= Techno Service Ltd (2022) eKLR paragraph 34.

13. The Respondents also aver that order 45 of the Civil Procedure Rules has a small gate which can only be opened if there is a technical failure and does not give way for a second bite at the Cherry. Additionally, that the Applicant does not state there is discovery of new and important evidence. They concluded that this Court is functus officio as the grounds raised are for appeal and not for review.

Analysis and determination

14. The principles to be considered when granting review orders are set out in Section 80 of the *Civil Procedure Act* and in Order 45 of the Rules. Order 45 Rule (1) provides as follows:

”(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.” (underline mine for emphasis).

15. The question this court is called to answer is whether the application, as filed, has demonstrated error or mistake on the face of the record, or whether there is sufficient cause to vary and/or set aside the impugned ruling of 19.11.2023. In the case of Stephen Gathua Kimani vs. Nancy Wanjira Auctioneers, Civil Appeal No. 42 of 2012, the trial court considered ‘sufficient reason’ at great length, thus,

> “ Mulla in the Code of Civil Procedure states that the expression ‘sufficient reason’ is wide enough to include a misconception of fact or law by a Court or even by an advocate.”

16. The Applicant took issue with paragraphs 14 – 16 of the impugned ruling where the trial Judge stated thus:-

14. It will be seen from the foregoing that where the lease is expired, the lessee applies for renewal to the National Land Commission. The Commission is then to seek the recommendations of the County Executive Committee Member responsible for land within the County (CEC, Lands). The CEC, Lands then considers the representations of the relevant authorities before arriving at a decision. If the County Government does not agree to the renewal of the lease, the Commission will communicate that decision. There is a right to appeal to the Independent Appeals Committee and a further appeal to the court.

15. From the foregoing, and strictly speaking, the court comes at the tail end on appeal. In our case, the parties first came to court. The court with concurrence of the parties referred the matter to the National Land Commission. Probably there would have little problem if all parties were agreeable to the decision of the National Land Commission but we have a complication herein because the 4th defendant/counterclaimant is not agreeable to the decision. Where does that leave us?

16. We cannot bypass the role of the County Government as provided by law which I have already elaborated above. However, given that there is a dispute, the CEC Lands will, in addition to seeking representations from the relevant authorities as required by Rule 6 above, also proceed to hear the parties who are interested in the renewal of the lease, that is, the plaintiffs, the 4th defendant and the legal representative of Zakaria Matoya.

17. According to the Applicant, this was an error or mistake as the trial Judge did not consider her documents, which showed the lease had been renewed from 1.5.2000 for a period of 66 years and

what remained was her to provide letters of administration of the estates of the business partners. She pointed to the letter dated 23.11.2012 from the Commissioner of Lands which read in part as follows;

> "Please note the Government has approved the renewal of lease for the property Kisii Municipal Block 111/140. To facilitate the renewal please provide letters of administration of the estate of the business partners of Kisii Vegetables and Fruit Supplies Store."

18. Can the Order referring the matter to CEC Lands of Kisii County Government to handle the renewal process be considered an error or mistake on the face of the record, or does it constitute a ground of appeal? The trial Judge stated that he reached the decision to refer the matter to CEC Lands in accordance with the provisions of Rule 6(1) of Legal Notice No. 281 of 2017, after considering the issues raised by both parties (paragraph 9 of the Ruling).

19. I have considered the rival arguments and perused paragraph 8 of the impugned ruling, where the Judge noted the objections raised by Mr. Mbaka, learned counsel, as to why the National Lands Commission report should not be adopted. This included a letter dated 22.5.2025 from Business Registration Services, which set out the particulars of the partners of Kisii Vegetables and Fruit Supplies store.

20. The judge stated that he had taken note of the above account and proceeded to restate the law on the process of renewing a lease under section 13 of the *Land Act*. The Ruling made no specific reference to the letter of 23.11.2012, which led the Applicant to argue that an error had been made in paragraphs 14 – 17 of the Ruling. The Applicant contends that had the judge come across this letter (23.11.2012), he may have reached a different conclusion.

21. The Court of Appeal in the case of Associated Insurance Brokers v Kenindia Assurance Co Ltd (Civil Appeal 94 of 2013) [2018] KECA 809 (KLR) (9 February 2018) (Judgment) cited Nyamogo and Nyamogo Advocates v. Kogo [2001]1 E. A.173 which discussed what constitutes error or mistake on the face of the record. The Court held as follows;

> "An error apparent on the face of the record cannot be defined precisely and exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to 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 or 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 also possible. Mere error or wrong view is certainly no ground for a review although it may be for an appeal."

22. In this application, the reasons which the Applicant stated in support of the application appears to me as if she was arguing an appeal and not grounds of review on account of mistake or error apparent on the face of the record. For instance, in ground number 2, she states that the Ruling blatantly interferes with the findings of the Ultimate Arbitor; the reasoning in ground 4 that the impugned Ruling contradicts the earlier Ruling of 1st March, 2023; and in ground 6, the Applicant states that paragraphs 18-21 are irrelevant as the conditions were satisfied evidenced by the documents found at pages 30-49 of the list of documents filed with the Plaint.

23. Further, discussing what are grounds for review and those for appeal, the Court of Appeal in the case of Pancras T. Swai v Kenya Breweries Limited [2014] eKLR, the held that:

> " It seems clear to us that the appellant, in basing his review application on the failure by the Court to apply the law correctly faulted the decision on a point of law. That was a good ground for appeal but not a ground for an application for review. If parties were allowed to seek review of decisions on grounds that the decisions are erroneous in law, either because a Judge has failed to apply the law correctly or at all, a dangerous precedent would be set in which court decisions that ought to be examined on appeal would be exposed to attacks in the courts in which they were made under the guise of review when such courts are factus [sic] officio and have no appellate jurisdiction...The power to review decisions on appeal is vested in appellate courts..."

24. Based on the two decisions cited, I am convinced to hold that the grounds raised in the application do not meet the threshold under the heading of error apparent or mistake on the face of the record. The Applicants are questioning the merit of the Ruling delivered on 19th November, 2015 for not considering their letter of 23.11.2012 while on the face of it the Judge stated he considered all the issues raised by the parties. If the Applicants were not satisfied, they should move the Court of Appeal. This court whether differently constituted cannot sit on appeal on its own decision.

25. The result is that the application dated 2nd December, 2025 is dismissed. I order each party to bear their respective costs.

DATED, SIGNED AND DELIVERED AT KISII THIS 23RD DAY OF APRIL, 2026.

A. OMOLLO

JUDGE