

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MAKUENI

ELC CASE NO 33 OF 2017

**STELLA KAVINDU NGOMA (Suing as the daughter and legal representative of the Estate of Alice Mbinya Ngoma – Deceased)
..... PLAINTIFF**

VERSUS

**CATHERINE NDINDA MATHEKA.....1ST
DEFENDANT**

TITUS TAITI MUENI..... 2ND DEFENDANT

**ABEDNEGO MULINGE TWILI..... 3RD
DEFENDANT**

ABEDNEGO KAVOO MUTUA.....4TH DEFENDANT

**PIUS MUEMA MAVINDU.....5TH
DEFENDANT**

THE HON. ATTORNEY GENERAL..... 6TH DEFENDANT

NZIOKA NGOMA.....7TH DEFENDANT

RULING

1. This is a ruling in respect of a notice of motion dated 4th December, 2025 in which the Plaintiff/Applicant is seeking a review of the Judgment delivered on 26th January, 2023 and subsequent orders issued on 23rd February, 2023. The Applicant contends that the court omitted to grant prayer (b) of the Plaint which was directly flowing from prayer (a).
2. The Applicant states that it is necessary that the judgment be reviewed so that it can include prayer (b) for it to be executable.
3. The Applicant's application was opposed by the 1st and 4th Defendants/Respondents based on a replying affidavit sworn on 9th January, 2026. The Respondents contend that the Applicant's application is incompetent as it is brought under the wrong provisions of the law. The Respondents further contend that the Applicant is asking the court to grant a

relief which the court did not grant and that to allow the Applicant's application will amount to the court sitting on appeal in its own judgment.

4. The parties were directed to file written submissions. The Applicant filed submissions dated 9th March, 2026. The Respondents filed submissions dated 16th March, 2026.
5. I have carefully considered the Applicant's application, the opposition thereto the Respondents as well as the submissions by the parties. The only issue for determination is whether the Applicant has demonstrated that there is an error apparent on the face of the record.
6. A look at the judgment which was delivered on 26th January, 2023 shows that the judgment omitted grant of prayer (b) of the plaint. The court having granted prayer (a) of the plaint, it followed that prayer (b) should have also been granted for the judgement to be executable.
7. The court having ordered cancellation of title numbers Kisau/Mangani/374, 935 and 936, it was necessary for prayer (b) to be granted for the judgment to be executable. By granting prayer (a) without prayer (b), the judgment remained hanging and incapable of being implemented. The purpose of prayer (b) was to make the process of succession of the Estate of Alice Mbinya Ngoma executable.
8. There is clearly an error apparent on the record. In the case of **National Bank of Kenya –vs- Ndungu Njau (1977) eKLR** the Court of Appeal held that review is available only for correction of an obvious and apparent error not for re-argument or re-examination of evidence and law already decided.
9. I therefore find merit in the application dated 4th December, 2025 which is allowed in terms of prayer 2 and 3.

It is so ordered.

.....

HON. E. OBAGA

JUDGE

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT
TEAMS THIS 29TH DAY OF APRIL, 2026.**

IN THE PRESENCE OF:

Mr. Kioko for Applicant.

Mr. Kimeu for 4th Respondent.

Court assistant – Steve Musyoki

ORIGINAL