Njenga v Kariuki & 2 others (Environment and Land Case 323 of 2015) [2026] KEELC 2656 (KLR) (27 April 2026) (Ruling)

Neutral citation: [2026] KEELC 2656 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT AND LAND CASE 323 OF 2015

TW MURIGI, J

APRIL 27, 2026

BETWEEN

RUTH GATHONI NJENGA ..... PLAINTIFF

AND

ANDREW MIRARA KARIUKI ..... 1ST DEFENDANT

KAHAWA WEST INVESTMENT COMPANY LTD ..... 2ND DEFENDANT

AND

ANNAH NYOKABI KENYATTA ..... PROPOSED INTERESTED PARTY

RULING

1. Before me are two applications for determination.
2. The first application is a Notice of Motion dated 3rd June 2025, brought under Order 9 Rule 9 and Order 45 Rule 2 of the Civil Procedure Rules, in which the 1st Defendant / Applicant seeks the following orders:
    a. Spent.
    b. That the Honourable Court be pleased to grant leave to the Applicant to act in person.
    c. Spent.
    d. That the Honourable Court do review its Judgment delivered on 6/7/2022 by Hon. Justice Mogeni to an extent of dismissing the Plaintiff's claim against the 1st Defendant and transfer liability to the 2nd Defendant forthwith.
    e. That the costs of this application be borne by the Respondents in any event.

3. The application is based on the grounds appearing on its face together with the supporting affidavit of Andrew Mirara Kariuki, sworn on even date.

The Applicant's Case

4. The Applicant averred that he was previously represented by the firm of Mbatie Associates & Company Advocates until the delivery of judgment on 6th July 2022, and now seeks leave to act in person.

5. He deposed that the Court delivered a judgment in favour of the 1st Respondent, granting eviction orders against him and awarding Kshs. 3 million as compensation for trespass. Dissatisfied with the decision, he instructed his advocates to lodge an appeal.

6. He asserted that he had occupied the suit plot in good faith, believing it was allocated to him by the 2nd Defendant. However, he later discovered, after the judgment was delivered, that Plot No. S 90 belongs to the Interested Party. He argued that neither of the litigating parties owns the suit property, as their claims are solely based on sale agreements and share certificates, which do not confer ownership.

7. He argued that the dispute stemmed from the double allocation by the 2nd Defendant and therefore they should bear any liability arising from it. In light of this new discovery, he urged the Court to grant the application as prayed.

The 1St Respondent's Case

8. The 1st Respondent filed a replying affidavit dated 23rd June 2025, in opposition to the application. She argued that the application is frivolous, vexatious, and an abuse of the court process, brought solely to delay the finalization of the matter.

9. She asserted that the purported joinder of an Interested Party is improper, as no formal application for joinder has been made, rendering such party a stranger to the proceedings. She acknowledged that judgment was delivered on 6th July 2022 in her favour, followed by a decree issued on 9th December 2022.

10. She denied being served with any Notice of Appeal and disputed the authenticity of the document attached by the Applicant, claiming that no valid notice exists. She argued that the judgment definitively established she is the bona fide owner of Plot S. 90 and that the decision remains binding, having neither been set aside nor appealed.

11. She further deposed that the Applicant's claim of discovering new evidence is unfounded and merely an afterthought aimed at reopening a matter that has already been settled. She emphasized that ownership was a key issue in the trial, where the Applicant participated and acknowledged possession of the suit property.

12. The Plaintiff argued that any claim of double allocation is solely between the Applicant and the allocating authority and does not affect her proprietary rights or the validity of the judgment.

13. On that basis, she argued that the decree remains valid and enforceable, and urged the Court to dismiss the application with costs.

THE RESPONSE

14. The Applicant filed a further affidavit dated 11th September 2025.

15. He asserted that he had filed and served an application dated 9th June 2025 seeking to join the intended Interested Party, thereby addressing the Plaintiff's objection to the joinder. He argued that

the Defendants were aware of his intention to appeal, as demonstrated by a Notice of Appeal included in a pending application for stay before the Court of Appeal.

16. He argued that the application was prompted by new evidence indicating that Plot No. S 90 does not belong to the litigating parties but to the intended Interested Party. In this regard, he produced a map, an official search, and a title deed to support this claim.

17. He contended that both he and the Plaintiff were misled by the 2nd Defendant into entering sale agreements for property that did not belong to it, rendering both parties innocent purchasers and trespassers. He contended that the Court's judgment was based on incomplete disclosure, as the true ownership of the property was not disclosed at trial.

18. He argued that this new evidence fundamentally changes the basis of the dispute and justifies a review of the judgment, as any appeal would be rendered futile. He therefore urged the Court to exercise its jurisdiction to review the judgment, allow the joinder of the interested party, expunge the defective replying affidavit, and grant the orders sought.

19. The second application is a Notice of Motion dated 9th June 2025, brought under Order 1 Rule 10(2), Order 40, and Section 3A of the Civil Procedure Rules, in which the 1st Defendant/Applicant seeks the following orders:

    a. Spent.

    b. That Annah Nyokabi Kenyatta be and hereby joined as the 3rd Respondent party to this suit.

    c. That the costs of this application be borne by respondents in any event.

20. The application is based on the grounds appearing on its face together with the supporting affidavit of Andrew Mirara Kariuki, sworn on even date.

The Applicant's Case

21. The Applicant asserts that the application for joinder was prompted by the discovery of new evidence indicating that the suit property, Plot No. S 90, belongs to the intended Interested Party.

22. He argued that the Interested Party is directly affected by the outcome of the proceedings and should, in the interests of justice, be joined as a party. He maintained that the Interested Party, being the holder of the title to the suit property, is best placed to clarify and resolve the dispute between him and the 1st Respondent, who are squatters on the suit property.

23. He asserted that the joinder would enable the Court to have all relevant parties before it, thereby facilitating a just and conclusive determination of the dispute. He argued that no prejudice would be occasioned to any party if the application is allowed as prayed.

The 1St Respondent's Case

24. The 1st Respondent filed a replying affidavit dated 8th December 2025, opposing the application. She argued that the application is frivolous, vexatious, and an abuse of the Court process, brought solely to delay and frustrate the enforcement of the decree.

25. She argued that under Order 1 Rule 10(2) of the Civil Procedure Rules, joinder can only be sought while proceedings are subsisting, whereas the present matter was concluded upon delivery of the judgment on 6th July 2022. She contended that the application is incompetent and incapable of being granted. She further invoked the principle of finality in litigation, asserting that the Applicant is

attempting to reopen concluded proceedings, and that any recourse lies in an appeal rather than review or joinder.

26. She challenged the Applicant's standing, arguing that he cannot compel the proposed Interested Party to participate, especially when that party has neither entered an appearance nor expressed any interest in the proceedings.

27. She further argued that the application seeks to introduce a new and distinct cause of action that has not been previously pleaded or litigated, thereby altering the nature of the suit and undermining the Plaintiff's position as the dominus litis. The Plaintiff denied any knowledge of or claim against the proposed Interested Party and asserted that there is no nexus between the suit property and the parcel allegedly belonging to the Interested Party.

28. She contended that the application is an afterthought, having been filed after an inordinate delay of three years following the judgment. Based on the foregoing, the 1st Respondent urged the Court to dismiss the application with costs.

The Response

29. The Applicant, through the two further affidavits, reiterated that the review application relies on the discovery of new and material evidence demonstrating that Plot No. S 90 is part of land parcel Ruiru/Kiu Block 7/131 belonging to the intended Interested Party, and not to the litigating parties.

30. He deposed that the original proceedings and judgment were based on a mistaken belief that the 2nd Defendant owned the suit property and had lawfully sold it to both himself and the Plaintiff through sale agreements and share certificates. He argued that following the new discovery, both parties' claims to ownership were displaced, rendering them trespassers on the Interested Party's land.

31. He maintained that the 2nd Defendant misrepresented the ownership of the property, thereby defrauding both himself and the Plaintiff by failing to disclose that the land belonged to a third party. He contended that the Court's judgment was ultimately based on material non-disclosure, particularly the reliance on the priority of sale agreements rather than on actual ownership.

32. He asserted that the map, official search, and title deed confirm the interested party's ownership of the land, and that this evidence is not an afterthought but arose after the judgment.

33. He reiterated that, in light of this discovery, the judgment ought to be reviewed, as an appeal would be rendered futile.

34. He also stated that the intended Interested Party has asserted ownership and initiated steps, including survey processes and identifying occupants, confirming her proprietary interest in the land.

35. The Applicant asserted that neither he nor the Plaintiff holds any legitimate proprietary rights over the suit property, that their occupation derives from transactions with the 2nd Defendant, and that it is imperative for the Court to include the Interested Party along with a review of the judgment to ensure a just determination.

36. Both applications were canvassed by way of written submissions

The Applicant's Submissions

37. The 1st Defendant/Applicant filed his submissions dated 21st October 2025. The Applicant's submissions were based on the principles governing review under Order 45 of the Civil Procedure Rules. He argued that the application meets the threshold of discovering new and important matter

which, despite exercising due diligence, was not known to him at the time of trial, thus activating the Court's jurisdiction to revisit its judgment.

38. It was further submitted that a judgment based on misrepresentation or non-disclosure of material facts should not be upheld. To support this argument, reliance was placed on Libyan Arab Uganda Bank for Foreign Trade and Development & Another v Adam Vassijadsi (1986) UG CA 6, wherein the Uganda Court of Appeal, citing Jones v National Coal Board [1957] 2 QB 55, underscored that a court determines only the issues presented by the parties and that justice is compromised when material facts are concealed.

39. The Applicant submitted that both parties and the Court are bound by the pleadings as they are framed. In this regard, reliance was placed on Independent Electoral and Boundaries Commission & Another v Stephen Mutinda Mule & 3 Others [2014] eKLR, which adopted the reasoning in Malawi Railways Ltd v Nyasulu [1998] MWSC 3 and Sir Jack Jacob's exposition in "The Present Importance of Pleadings" (1960) Current Legal Problems 174. The principle advanced is that a court cannot determine issues not pleaded, and where material facts were not before the court, review is warranted to enable a proper adjudication.

40. On joinder, the Applicant relied on Order 1 Rule 10(2) of the Civil Procedure Rules to submit that the Court has discretion to join a party at any stage of proceedings where such joinder is necessary for the effective and complete resolution of the issues in dispute, especially when the outcome is likely to affect that party's rights.

The 1St Respondent's Submissions

41. The 1st Respondent filed her submissions dated 9th December 2025.

42. On behalf of the Plaintiff, Counsel outlined the following issues for the Court's determination:

    a) Whether the application dated 3rd June 2025 is defective in form and substance;

    b) Whether the Applicant has satisfied the grounds for review;

    c) Whether the Applicant has satisfied the requirements for joinder.

43. Regarding the first issue, Counsel argued that the application is defective both in form and substance because it does not meet the statutory requirements for review under Section 80 of the *Civil Procedure Act*, read with Order 45 Rule 1 of the Civil Procedure Rules, and is essentially an abuse of the court process. It was contended that review and appeal are mutually exclusive remedies, and that a party who has invoked the appellate jurisdiction cannot later seek review of the same decision. Reliance was placed on Ndithya v Total Kenya Limited (Miscellaneous Civil Application E218 of 2021) [2022] KEHC 10080 (KLR), where the Court held that a litigant cannot exercise both rights simultaneously.

44. Counsel further submitted that an application for review must be accompanied by the decree or the order sought to be reviewed; failure to do so is fatal. In this regard, reliance was placed on Wilson Saina v Joshua Cherutich Trading as Cherutich & Company Limited [2003] KEHC 685 (KLR) and Julius Mukami Kanyoko & 2 Others v Samuel Mukua Kamere & Another [2014] KEHC 8133 (KLR), where the courts held that omission to annex the decree renders the application incompetent.

45. Regarding timeliness, Counsel submitted that review must be sought without unreasonable delay. Counsel argued that the present application, having been filed approximately three years after the judgment, is inordinate and unexplained. Reliance was placed on Ferrotech Industries Ltd v Mwadzive Ali Hare [2021] eKLR and Francis Origo & Another v Jacob Kumali Mungala [2005] eKLR, which held that delay defeats an application for review unless satisfactorily explained.

46. Counsel contended that the alleged discovery of new evidence does not meet the threshold under Order 45, since there is no proof that such evidence could not, with due diligence, have been obtained at the time of trial. In this regard, reliance is placed on Ndiga v Said [2024] KEHC 964 (KLR), where the Court emphasised that due diligence is a prerequisite for the grant of review.

47. Counsel invoked the principle of finality of litigation, arguing that the application is an attempt to reopen concluded proceedings and seek a second chance, which contradicts the doctrine that litigation must be concluded.

48. Regarding the issue of joinder, Counsel cited Trusted Society of Human Rights Alliance v Mumo Matemu [2015] eKLR and Francis Karioki Muruatetu & Another v Republic & 5 Others [2016] eKLR to submit that an Interested Party must demonstrate a proximate and identifiable stake in the proceedings. It was contended that such joinder must be sought during the pendency of the proceedings and not after final judgment, as was held in Njogu & 2 Others v Gitinji & 2 Others; Ngriricha & 4 Others (Intended Interested Party) [2025] KEELC 936 (KLR).

49. Further reliance was placed on Merry Beach Limited v Attorney General & 18 Others [2018] eKLR to emphasise that post-judgment joinder is exceptional and would necessitate setting aside the judgement, especially when a party was not heard.

50. Counsel invoked the doctrine of dominus litis, submitting that the Plaintiff, as the master of the suit, retains the prerogative to decide whom to sue. Reliance was placed on Githere v Mwangi & 2 Others; Waithaka (Proposed Defendant) [2025] KEELC 3049 (KLR), where it was held that a defendant cannot compel the inclusion of a new party or change the character of the suit.

51. In conclusion, Counsel urged the court to dismiss the applications with costs.

Analysis And Determination

52. Having considered the applications, the responses and the rival submissions, the following issues arise for determination:

    a. Whether the 1st Defendant should be granted leave to act in person;

    b. Whether the judgment dated 6th July 2025 should be reviewed; and

    c. Whether the intended Interested Party should be joined in these proceedings

53. The Applicant seeks leave to act in person. Order 9 Rule 9 of the Civil Procedure Rules requires that where a party previously represented by counsel wishes to act in person after judgment, they must obtain leave from the Court.

54. The right to legal representation includes the right to self-representation. No prejudice has been demonstrated, nor is there any procedural impediment to the 1st Defendant acting in person. The prayer is therefore allowed.

55. Regarding the second issue, the Applicant seeks a review of the judgment based on the discovery of new and important evidence. The law governing applications for review is outlined in Section 80 of the *Civil Procedure Act* and in Order 45, Rule 1, of the Civil Procedure Rules. Section 80 of the *Civil Procedure Act* states 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."

56. Order 45 Rule 1 of the Civil Procedure Rules, provides that:

> "(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.
>
> (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review."

57. The Court of Appeal restated the provisions of Order 45 in the case of Benjoh Amalgamated Limited & Another Vs Kenya Commercial Bank Limited (2014) eKLR, as follows:

> "In the High Court both the *Civil Procedure Act* in Section 80 and the Civil Procedure Rules in Order 45 Rule 1 confer on the court power to review. Rule 1 of order 45 shows the circumstances in which such review would be considered ranging from discovery of new and important matter or mistake or error apparent on the face of the record or any other sufficient reason but section 80 gives the High court greater amplitude for review."

58. Similarly, in Republic vs Public Procurement Administrative Review Board & 2 Others (2018) eKLR the Court held that:

> "Section 80 gives the power of review and Order 45 sets out the rules. These rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review."

59. The Court must first consider the issue of delay. The impugned judgment was delivered on 6th July 2022. The current application was filed on 3rd June 2025, roughly two years and eleven months later. No satisfactory explanation has been provided for this delay. As noted in Ferrotech Industries Ltd v Mwadziwe Ali Hare [2021] KEELRC 457 (KLR), any delay that seems excessive must be adequately explained by the applicant. In the circumstances, the delay is inordinate and, on that ground alone, disentitles the Applicant to the discretionary relief of review.

60. The Applicant has not demonstrated that the alleged evidence was beyond his knowledge or could not, with reasonable diligence, have been obtained during the course of the suit. The documents relied

upon, namely an official search and a title deed for Ruiru KIU Block 7/131, are public records that were easily accessible. No evidence has been provided to show that any attempt was made to acquire such evidence before the judgment.

61. The Court must also determine whether the alleged new evidence is relevant. The Applicant argued that the suit property is registered in a third party's name and seeks to include that party as an interested party. However, the suit before this Court relates to Plot No. S.90. The documents produced relate to a different parcel, specifically Ruiru KIU Block 7/131.

62. Beyond his averments, the Applicant has not established any nexus supported by evidence, whether legal, factual, or physical, between the said parcel and Plot No. S.90, which was the subject of the judgment. In the absence of such a nexus, the alleged new evidence, by itself, is incapable of affecting the Court's findings. It neither undermines the Plaintiff's title as determined nor demonstrates any error in the judgment.

63. Consequently, the new evidence lacks probative value on the issues determined by the Court. It does not meet the threshold outlined in Order 45 Rule 1, as it would not have changed the outcome even if it had been presented at trial.

64. The application essentially seeks to reopen the merits of the case and to attribute liability to a third party based on an alleged double allocation. Such matters go to the merits of the dispute and ought to have been raised during the trial. They are beyond the scope of review and properly fall within the domain of an appeal.

65. Regarding the second issue, the law governing the joinder of parties is based on Order 1 Rule 10(2) of the Civil Procedure Rules, which states as follows;

> " The Court may at any stage of the proceedings, either upon, or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as Plaintiff or Defendant be struck out, and that the name of any person who ought to have been joined, whether as Plaintiff or Defendant or whose presence before the court may be necessary to enable the court to effectually and completely to adjudicate upon or settle all questions involved in the suit, be added."

66. Black's Law Dictionary (8th Edition) defines an Interested Party as:

> " a party that has a recognizable stake and therefore a standing in the matter."

67. In the case of Trusted Society of Human Rights Alliance vs Mumo Matemo & 5 Others (2015) eKLR, the Court held that:

> " An interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the court when it is made either way. Such a person feels that his interest will not be well articulated unless he or she appears in the proceedings and champions his or her cause."

68. While joinder is generally sought before or during trial, jurisprudence recognizes that, in limited circumstances, a party may be enjoined even after judgment. In JMK vs MWM & Another [2015] eKLR, the Court of Appeal acknowledged that joinder can be allowed after judgment and even at the appellate stage. Similarly, in Teachers Service Commission vs Kenya National Union of Teachers; Secretary/Chief Executive Officer, Teachers Service Commission & Another (Contemnors); Cabinet Secretary for Labour and Social Protection & 2 Others (Interested Parties) [2021] eKLR, the Court

confirmed that post judgment joinder may be necessary where the implementation or interpretation of a judgment is likely to affect the rights of a nonparty. Such joinder, however, remains exceptional and must be justified by clear and compelling grounds.

69. In the present case, the prayer for joinder is inextricably based on the same material relied upon in support of the application for review. Having found that the said material neither qualifies as newly discovered evidence nor meets the threshold, it follows that the basis for seeking joinder is untenable.

70. The Applicant has not shown that the intended interested party has a direct and identifiable stake in the suit property. No evidence has been presented to establish any nexus, whether legal, factual, or physical, between the property alleged to be owned by the proposed interested party and the suit property. In the absence of such a nexus, the Court is unable to discern any prejudice that would be occasioned to the proposed party if joinder is declined.

71. In light of the foregoing, I find that the applications are without merit and are hereby dismissed with costs.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 27TH DAY OF APRIL, 2026.

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HON. T. MURIGI

JUDGE

In The Presence Of: -

In the absence of the parties

Ahmed – Court Assistant