

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KAJIADO
ELC E026 OF 2022

JOHNSON OLE PURKEI.....PLAINTIFF

VERSUS

SINKWA PASUA.....1ST
DEFENDANT

JOHN PASUA.....2ND
DEFENDANT

SEMPELIAN PASUA.....3RD
DEFENDANT

PARSORE PASUA.....4TH
DEFENDANT

KANYIOMPE PASUA.....5TH
DEFENDANT

MISERENJA PASUA.....6TH
DEFENDANT

RULING

(In respect of the Notice of Motion dated 6th August 2025 brought under the provisions of Order 45 rule 1 of the Civil Procedure Rules and Section 80 of the Civil Procedure Act seeking review of the judgment delivered on 25th April 2025)

BACKGROUND.

1. The Court delivered judgement in this matter way back on 25th April 2025, dismissing the Plaintiff's case against the Defendants. This was after the court found that the Plaintiff

had failed to discharge the burden of proof on a balance of probabilities. He had not proved the claim of trespass against the Defendants.

2. Aggrieved by the judgement of the Court, the Plaintiff filed the application under consideration, 103 days after its delivery seeking for an order of review of the judgement dismissing the Plaintiffs case against the Defendants, set it aside and substitute it with the prayers sought in the plaint in favour of the Plaintiff particularly with a finding that the Defendants jointly and severally have trespassed onto the Plaintiff's land Kajiado/Loodariak/221.
3. The Plaintiffs application is premised on the grounds on the face of it and on the supporting affidavit of Johnson Ole Purkel. The Plaintiff asserts that the court's judgement was ostensibly informed by the failure by the Plaintiff to create or establish a nexus between one Pasua Ole Parsoi and the Defendants herein whereas the Defendants are the sons of Pasua Ole Parsoi who is since deceased. He explains that it is the reason why they are all named 'Ole Pasua'. The Defendants, according to the Plaintiff, came into his land as

a result of the encroachment by their father who has since died and leaving them residing and encroaching the land.

4. It is the Plaintiff's case that he had laid a basis in his demand letter dated 15th November 2021 whereby he notified John Parsoi of the trespass by him and his family and demanded that they cease the illegal occupation. Further, the Plaintiff affirms that he has now acquired a letter from the area chief buttressing his position and confirming the encroachment by the Defendants and their family members. The new evidence allegedly, not only reveals the accurate names of the Defendants but also establishes a clear link between the parties originally named and those now properly identified demonstrating that they are guilty of trespass.
5. The Plaintiff avers that the letter from the Chief could not have been obtained at the time of the hearing despite due diligence because the Chief was unwilling to get involved in the dispute that was at the time pending before this court. The Plaintiff asserts that the Chief only agreed to write the

letter after the determination of the case vide the impugned judgement.

6. The supporting affidavit by the Plaintiff reiterates the grounds on the face of the application while attaching the Chief's letter dated 18th June 2025 as an annexure.

Response by the Defendants/ Respondents.

7. Vide the replying affidavit sworn by Sempelian Pasua, on his own behalf and on behalf of the other Defendants, the Defendants termed the Plaintiff's application a non-starter, vexatious and an abuse of the court process as well as a waste of precious judicial time. They assert that the Plaintiff's suit was dismissed for failure to prove trespass and not lack of nexus between on John Parsoi and the Defendants/Respondents.
8. The Defendants further assert that the alleged new evidence in the form of the Chief's letter was prepared after the judgement in this matter was delivered yet the said Chief was not called as a witness during the hearing of the case.

9. The Defendants insist that they occupy the parcel of land known as Kajiado/Loodariak/221 which belonged to the late Pasua Ole Parsoi which is different from the Plaintiff's parcel of land. They too attach a letter by an Assistant Chief dated 18th June 2025 confirming that they reside on the parcel of land known as Kajiado/Loodariak/221.
10. The Defendants accuse the Plaintiff of fabricating "new" evidence and seeking to re-open issues which have adequately been conclusively determined by this court.

Court's Directions.

11. The Court's directions issued on 16th February 2026 were that the application be canvassed by way of written submissions beginning with the Plaintiff/Applicant who was to file and serve the submissions within 14 days. The Defendants/Respondents were to file and serve their submissions in 14 days after service by the Plaintiff/Applicant. The Court emphasized that time was of the essence and parties were expected to strictly comply within the timelines.

12. The Plaintiff/Applicant did not file submissions within the timelines given by the court. The Defendants nonetheless filed their submissions which the court has considered in writing this ruling.

Issues for Determination.

13. Having considered the application and the response thereto, the sole issue for determination in this Court's opinion is whether the Plaintiff's application meets the threshold for review.

Determination.

14. The Court's discretionary power to review its judgement or order is provided for under Section 80 of the Civil Procedure Act and Order 45 rule 1 of the Civil Procedure Rules. Mativo J (as he then was), in the case of **Republic vs Advocates Disciplinary Tribunal: Ex parte Apollo Mboya (2019) eKLR**, spelt out the considerations for review as follows;

“The principles which can be called out from the above noted authorities are;

- a) A Court can review its decision on either the grounds enumerated in Order 45 rule 1 and not otherwise.**
- b) The expression “any other sufficient reason”, appearing in Order 45 rule 1 has to be interpreted in light of the other specified grounds.**
- c) An error which is not self-evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of record justifying exercise of power under Section 80.**
- d) An erroneous order/decision cannot be corrected in the guise of exercise of the power of review.**
- e) A decision/order cannot be reviewed under Section 80 on the basis of subsequent decision/judgement of a coordinate or larger bench of the tribunal or a superior court.**

f) While considering an application for review, the court must confine its adjudication with reference to material, which was available at the time of the initial order/decision as vitiated by an error apparent.

g) Mere discovery of new of important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence the same could not be produced before the court/tribunal earlier.

h) A mistake or an error apparent on the ace of the record means a mistake or an error, which is a prima facie visible and does not require any detailed examination.

i) Section 80 of the Civil Procedure Code provides for a substantive power of review by a civil court and consequently by the

appellate courts. The words occurring in Section 80 mean subject to such conditions and limitations as may be prescribed thereof and for the said purpose, the procedural conditions contained in Order 45 rule 1 must be taken into consideration. Section 80 of the Civil Procedure Code does not prescribe any limitation on the power of the court, but such limitations have been provided for in Order 45 rule 1.

j) The power of a civil court to review its judgement/decision is traceable in Section 80 CPC. The grounds on which review can be sought enumerated in Order 45 rule 1.”

15. The application before me is premised on the ground of discovery of new or important matter or evidence in the form of the Chief’s letter dated 18th June 2025.

16. It is not in dispute that the Chief’s letter referred to by the Plaintiff/Applicant was written at his request after the judgement of this Court was delivered. Notably, the Chief

was not called as a witness during the hearing of the case as rightly pointed out by the Defendants. The Plaintiff in his bid to justify the letter states that the Chief was unwilling to write the letter during the pendency of the case and was only persuaded to do so after judgement has been rendered by this court.

17. The Law of Evidence Act has adequate mechanisms for the compulsion of witnesses to testify in a case. At no time, and the record will bear me witness did the Plaintiff apply for an order or summons to compel the attendance of the Chief as a witness or to produce any document.

18. As Mativo J stated in the above cited decision, in order for an applicant to succeed in review, on the basis of discovery of new or important matter or evidence, he must demonstrate to the satisfaction of the court that the new or important matter or evidence was not within his knowledge or could not be produced at the time when the decision/order was made despite the exercise of due diligence.

19. The Applicant in this case has not demonstrated why the Chief; a competent and compellable witness could not have been compelled to attend court and present the so called new evidence at the hearing. In any case, I find nothing new or of probative value in the letter by the Chief. It is at best his opinion without any legal or factual basis.

20. I do agree with the holding in **Evan Bwire vs Andrew Nginda** (cited by Mativo J in the above referenced case) to the effect that an application for review will only be allowed on very strong grounds particularly if its effect will amount to reopening the application or case a fresh.

21. The application by the Plaintiff is unmerited and has clearly not met the threshold for review under the law. It is hereby dismissed with costs to the Defendants.

It is so ordered.

Dated Signed and Delivered at Kajiado Virtually this 23rd Day of April 2026.

M.D. MWANGI
JUDGE

In the virtual presence of:

Mr. Thuo for the Plaintiff/Applicant

Mr. Chacha for the Defendants/Respondents

Court Assistant: Peninah

M.D. MWANGI

JUDGE