



Mutua v Isingi & another (Sued as the legal representatives of the Estate of Kamala Isingi - Deceased) (Environment and Land Case Civil Suit 201 of 2014) [2026] KEELC 2622 (KLR) (5 May 2026) (Ruling)

Neutral citation: [2026] KEELC 2622 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE CIVIL SUIT 201 OF 2014**

AY KOROSS, J

MAY 5, 2026

BETWEEN

TIMOTHY MUSAU MUTUA PLAINTIFF

AND

MBATHA ISINGI & DAUDI ISINGI (SUED AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF KAMALA ISINGI - DECEASED) DEFENDANT

RULING

1. This is a ruling on the notice of motion dated 27 January 2026 filed by the deceased defendant, which is said to have been brought under Article 159 of *the Constitution* of Kenya 2010; Sections 1A, 1B, 3A and 80 of the *Civil Procedure Act* (Cap. 21) Laws of Kenya; Order 45 of the Civil Procedure Rules 2010 and all other enabling provisions of the law. He prays for the following orders:
 - a. Spent.
 - b. That this Honourable Court be pleased to review and/or set aside the orders/directions issued on 28 April 2025 to the extent that the Machakos County Surveyor conduct a joint survey of the positioning/location/origin of Plot No. 95 Makutano Market vis-à-vis the registered acreage of Land Parcel No. Mwala/Mango/1232 (in the presence of both the plaintiff and the defendant), and that a report be filed for consideration by this Honourable Court in arriving at its final decision within twenty-one (21) days of making the order.
 - c. That subject to granting prayer 2, parties be put at liberty to file further submissions in response to the report.
 - d. That the costs of this application be provided for.



2. The motion is based on the grounds listed on the face thereof and the supporting affidavit of Daudi Isingi alias David Kasyoki Isingi, sworn on the instant date. In summary, he asserts that the Chief Officer of the Department of Lands in Machakos and the Machakos County Land Registrar hold crucial records that could clarify the current issue. Despite repeated attempts to summon relevant public officers, they have failed to appear and provide necessary testimony, leading to the closure of the defence case on 27 October 2025, without this vital evidence. This court, dedicated to justice, should allow all parties the opportunity to present their evidence fully. The exercise sought is essential for a fair resolution of the disputes at hand, as the resulting report is significant and could greatly impact the case's outcome. Unfortunately, obtaining this information has proven impossible.
3. The motion is contested by a replying affidavit of the plaintiff, deposed on 3 February 2026, where he avers that the deceased defendant has failed to provide any new facts or circumstances that would justify their request to re-open his case after it has been lawfully closed. Previous conduct shows their indolence. The application for a new survey report is a delayed attempt to introduce evidence that should have been presented earlier in the trial, as the issues surrounding the suit Property was central to the case from the start in 2014.
4. Additionally, the deceased defendant has not explained why he took over 12 years to obtain a survey or submit relevant evidence during the hearing. Further, the application, filed nine months after the Court's orders on April 28, 2025, is an afterthought intended to fill gaps in the case.
5. In accordance with the court's directive, the motion has been canvassed through written submissions received from Ms. B. M. Musau & Co. Advocates LLP for the plaintiff, dated 13 February 2026 and from Ms. Nzei & Company Advocates for the defendants, dated 9 February 2026. Consequently, after identifying and examining the issues for determination, this ruling shall, in its subsequent analysis and decision, consider the arguments contained in the rival submissions, and will also take into account applicable law and judicial precedents.
6. Thus, having given careful thought to the motion, its grounds, affidavits and submissions, the distilled issue for determination that will adequately address the matters in controversy is whether the deceased defendant has met the legal threshold for the review of the orders of 28 April 2025 and/or whether this court is functus officio.
7. With respect to this issue, the relevant provisions governing the review of court decisions are set out in Section 80 of the [Civil Procedure Act](#) and Order 45, Rule 1 of the CPR. Section 80 states that;

“ 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.”
8. Further, Order 45, Rule 1(1), of the CPR 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.”

9. The salient conditions brought out in Order 45 Rule 1 (1) of the CPR, such as the discovery of new and important matter, mistake, and sufficient cause, have to be proved by an applicant, and in dealing with such applications, the court has to exercise its judicious discretion. With regard to the prevailing jurisprudence, this court aligns itself with paragraph 32 of the Supreme Court’s decision in Parliamentary Service Commission v. Wambora & 36 others [2018] KESC 74 (KLR), in which it articulated the following non-exhaustive guiding principles for the consideration of applications for review of court decisions:

“(i)A review of exercise of discretion is not as a matter of course to be undertaken in all decisions taken by a Limited Bench of this Court. (ii)Review of exercise of discretion is not a right; but an equitable remedy which calls for a basis to be laid by the applicant to the satisfaction of the Court;(iii)An application for review of exercise of discretion is not an appeal or a chance for the applicant to re-argue his/her application. (iv)In an application for review of exercise of discretion, the applicant has to demonstrate, to the satisfaction of the Court, how the Court erred in the exercise of its discretion or exercised it whimsically. (v)During such review application, in focus is the decision of the Court and not the merit of the substantive motion subject of the decision under review. (vi)The applicant has to satisfactorily demonstrate that the judge(s) misdirected themselves in exercise discretion and:(a)as a result a wrong decision was arrived at; or(b)it is manifest from the decision as a whole that the judge has been clearly wrong and as a result, there has been an apparent injustice.”

10. However, this application was filed with unreasonable delay as it was filed nine months after this court issued its order, hence contravening the provisions of Order 45 Rule 1 (1) (b) of the Civil Procedure Rules, which mandates that applications for review be filed without unreasonable delay. There has been no explanation for this delay.
11. Moreover, the deceased defendant is seeking a review of this court’s orders and grounds that the survey exercise is crucial to the case and that, in spite of reasonable diligence, he could not previously obtain it. In other words, he is raising the ground of sufficient cause. Without delving into whether the ground posited for review meets the threshold of sufficient cause, it is necessary to mention that in its order dated 28 April 2025, this court declined the deceased defendant’s request to file a surveyor’s report, which was sought two years after the plaintiff’s case was closed.
12. By seeking the filing of this report and reiterating the reasons why it should be admitted as evidence, it is clear to this court that the deceased defendant is attempting to re-argue his case, which is not permissible in review proceedings. In the Parliamentary Service Commission (Supra), a decision which this court adopts, it was held that an application for review is not an appeal or a chance for the applicant to re-argue his case, as in the present case. Hence, this court further finds that it is functus officio and that the grounds raised are not suitable for review but are appropriate for an appeal. Consequently, this court finds that the reliefs sought are unmerited.



13. In the end, and for the above reasons and findings, the application dated 27 January 2026 is hereby dismissed. Costs shall be in the cause.

Orders accordingly.

DELIVERED AND DATED AT MACHAKOS THIS 5TH DAY OF MAY, 2026.

HON. A. Y. KOROSS

JUDGE

05.05.2026

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms. Kanja Court Assistant

Miss Munywoki for Dr. Musau for plaintiff.

No appearance for defence.

