



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Ngugi v Mburu & another (Sued as the Personal Representatives of the Simon Njuguna Gachui - Deceased) (Civil Appeal E215 of 2024) [2025] KEHC 11352 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11352 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL APPEAL E215 OF 2024  
DO CHEPKWONY, J  
JULY 31, 2025**

**BETWEEN**

**JOSHUA NJIHIA NGUGI ..... APPELLANT**

**AND**

**MILKA WANJIKU MBURU ..... 1<sup>ST</sup> RESPONDENT**

**JOHN GACHUHI NJUGUNA ..... 2<sup>ND</sup> RESPONDENT**

**SUED AS THE PERSONAL REPRESENTIVES OF THE SIMON NJUGUNA  
GACHUI - DECEASED**

*(Being an Appeal from the Judgment and decree of the Honourable P. Muboli in Githunguri Chief Magistrate's Civil Case No.E050 of 2022 delivered on 14th November, 2024)*

**RULING**

1. What is before the court for determination is the Notice of Motion application dated 12<sup>th</sup> June, 2025 which seeks the following orders:
  - a. Spent.
  - b. Spent.
  - c. That this Honourable Court be pleased to review the Ruling and order issued on 5<sup>th</sup> May, 2025 to substitute security from deposit of the entire decretal sum in a joint interest earning account to a deposit of Title Number, Kilifi/Mtondia/ 4750 in court pending the hearing and determination of the Appeal herein.
  - d. That costs of this application abide to our costs of the appeal.



2. The Application is based on the Supporting Affidavit of Joshua Njihia Ngugi sworn on the instant date. The Application is opposed through Replying Affidavit sworn by Petronilla Wanjiru Karanja on 18<sup>th</sup> June, 2025.
3. According to the Applicant, a ruling was delivered on the 5<sup>th</sup> May, 2025 where this court ordered him to deposit the entire sum in a joint interest earning account within forty-five (45) days but he is unable to raise the said sum, thus wishes the court to review the orders and allow him to deposit a title deed for parcel No.Kilifi/Mtondia/4750 in court as security pending the hearing and determination of the appeal.
4. The Respondent on the other hand has opposed the application while arguing that is an afterthought , bad in law and ought to be struck out, since the Applicant has not demonstrated new and compelling evidence that was not previously available and neither does it contain any error apparent on the face of the record nor present any sufficient reasons to warrant the review of the impugned ruling.
5. According to the Respondent, the proposal to deposit the title deed is an afterthought as it was not sought in the initial Notice of Motion application dated 11<sup>th</sup> December, 2024. The Respondent also argues that the title deed is not adequate security since she will undergo substantial inconvenience of having to look for a buyer, if the applicant’s appeal is dismissed given that the property is in Kilifi as it will take substantial time, effort and inconvenience to transfer the said land to a buyer.
6. The Respondent further argues that given that the title deed still remains in the names of the Applicant, there is no guarantee that after depositing the same in court he will not proceed to report it as lost, misplaced or stolen and obtain another title. It is the Respondent’s contention that since this is monetary decree, the security should be in the form of monetary deposit making the title deed an inappropriate security, hence the application should be dismissed.

#### **Analysis and Determination .**

7. Having read through the application dated 12<sup>th</sup> June, 2025 alongside the Supporting Affidavit sworn by the Applicant and the Replying Affidavit sworn in response thereof in consideration of the prayer being sought, this Court confirms that the application seeking a review of its decision delivered vide a ruling dated 5<sup>th</sup> May, 2025.
8. The law on Review of a court’s decision, decree or order is enshrined under Section 80 of the [Civil Procedure Act](#) which provides that:-
 

“ Any person who considers himself aggrieved-

  - a. By a decree or order in which an appeal allowed by this Act, but from which no appeal has;
  - 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.
9. For an application for review to succeed, the Applicant has to satisfy the follong grounds as provided for under Order 45 of the [Civil Procedure Rules, 2010](#):-
  - (a) There must be discovery of a new and important matter which after the exercise of due diligence, was not within the knowledge of the applicant at the time the decree was passed or the order was made; or



- (b) There was a mistake or error apparent on the face of the record; or
  - (c) There were other sufficient reasons; and
  - (d) The application must have been made without undue delay.
10. Having examined the grounds advanced by the Applicant for review of the decision in the ruling delivered on 5<sup>th</sup> May, 2025, the court finds the issue of new evidence does not arise and neither is there an error on the face of the record nor sufficient reasons advanced to warrant the orders sought to be granted. The only reason that has been advanced is that the Applicant is unable to deposit the entire decretal sum on a joint interest-earning account and thus has offered to deposit a title deed to a piece of land registered in his name as security for the decretal sum.
11. It is trite law that the security for a money decree should be in the form of money, which is to be deposited in Court or in a joint interest earning account and not in terms of title deed for land. In the case of *Onesmus Mburu Njuguna – v- Samson Kitire Kuna* [2007]eKLR, the Court stated thus:-
- “The Judgment against the appellant is a money decree. In the circumstances, it would be fair and just that the security to be deposited should be in form of money and not a title deed of a parcel of land. I think it would be unjust to the respondent if this court were to accept the proposal by the appellant that he deposits a title deed instead of cash as security pending the hearing and determination of the Appeal.
- The purpose of security is to secure the interests of a respondent pending the hearing of the appeal. In the instant application, the respondent was awarded a money decree. The security should therefore be in form of money. I therefore hold that the security offered by the appellant is not appropriate for the circumstances of this case.”
12. With that regard the court finds the proposal by the Applicant to deposit the title deed is not appropriate and it ought to be monetary terms. Whereas the court sympathises with Applicant who claims not to be in a financial position to deposit the sum it must balance with the rights of the Respondent who successfully obtained judgment which he should not be kept away from enjoying the fruits. The Respondent has, and mightfully so, raised the issue of the inconvenience of realising its Judgment in case the appeal fails in terms of the substantial inconvenience, time and effort it will take to transfer the said piece of land which is currently registered in the name of the Applicant. Further, there is the misapprehension that has been raised that the Applicant could report the title deed as lost or lost and obtain another new title without the Respondent realising.
13. For those reasons, the court finds that the application ought to be dismissed with costs to the Respondent as it is unmerited. However, in the interest of justice, the court proceeds to allow the Notice of Motion application dated 12<sup>th</sup> June, 2025 in the following terms:-
- a. The prayer for substitution of security from a deposit of the entire decretal sum in a joint interest-earning account to a deposit of Title No.Kilifi/Mtondia/4750 be and is hereby declined.
  - b. In the alternative, the ruling and order issued vide a ruling delivered on 5<sup>th</sup> May, 2025 is hereby reviewed and substituted with an order that the Applicant deposits half (1/2 ) the decretal sum in a joint interest-earning account in the names of both counsel for the parties within thirty (30) days from the date hereon.



- c. Mention on 1<sup>st</sup> September, 2025 before the Deputy Registrar for the parties to confirm compliance of Order (b) and take directions on hearing of the appeal.
- d. Failure to comply with the Order (b) herein, will render the application dismissed and the Respondent will be at liberty to execute.

It is so ordered.

**RULING DATED AND SIGNED AT KIAMBU THIS 27<sup>TH</sup> DAY OF JULY , 2025.**

**D. O. CHEPKWONY**

**JUDGE**

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 31<sup>ST</sup> DAY OF JULY 2025.**

**FRANCIS RAYOLA OLEL**

**JUDGE**

