



**Kinuthia v Wambui & another (Environment and Land Case  
292 of 2018) [2025] KEELC 7176 (KLR) (8 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7176 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND CASE 292 OF 2018  
JA MOGENI, J  
OCTOBER 8, 2025  
(FORMERLY CMCC KIAMBU LAND CASE NO 1 OF 2010)**

**BETWEEN**

**THEDROUS CHEGE KINUTHIA ..... PLAINTIFF**

**AND**

**RUTH WAMBUI ..... 1<sup>ST</sup> DEFENDANT**

**TERESIAH WANJIKU ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The suit was commenced by the Plaintiff as a claim before the Land Dispute Tribunal Kiambu Municipality under the Land Dispute Tribunal Act (Repealed) and an award made on 7/01/2010. The award was made in favour of Thedrous Chege Kinuthia against the Objectors Ruth Wambui and Teresia Wanjiku who were directed to vacate the suit land within the next 90 days of the Land Dispute Tribunal.
2. The parties were given a Right of Appeal to the Provincial Appeal Committee within 30 days of the Ruling/Judgment which was made on 7/01/2010.
3. The Claimant Thedrous Chege Kinutha filed in the Chief Magistrate's Court CMCELK 1 of 2010 an application for adoption of the award dated 12/01/2010 and the Elders award was read in open Court and adopted as an order of the Court. Parties were allowed to lodge an appeal against the elder's decision at the Provincial Appeals Committee within 30 days from 4/3/2010 the date of the adoption.
4. A Decree was thereafter issued on 7/04/2015 where LR 76/748 was decreed to belong to the Claimant Thedrous Chege Kinuthia and the Objectors were directed to collect their title deeds from the company officer and get a surveyor to show them their rightful parcels according to the correct map.



5. No appeal was lodged save for an application dated 22/06/2015 for Judicial Review Orders of Certiorari against the decision of the Tribunal which was dismissed by Justice Odunga (as he then was). In dismissing the application, he noted that the application was time-barred having been filed 5 years after the Award was issued by the Tribunal and no probable explanation was forthcoming on the Defendants/Applicants' omission to move the Court within the Statutory prescribed timeframe of 6 months.
6. At the same time the Defendants filed another Notice of Motion Application dated 2/12/2018 seeking to re-open the Chief Magistrate's Court Case CMCELC Kiambu Land Case 1 of 2010 and the proceedings made by the Land Dispute Tribunal. In so doing the Court was also asked to set aside the proceedings of the Land Dispute Tribunal and the award made including the decree. In the alternative the Court was asked to review the findings of the Land Disputes Tribunal and make a finding that the suit property belonged to the Applicants among other prayers.
7. My sister Justice Gicheru on 23/07/2020 disposed that the Court had no jurisdiction to either set aside or reopen the case and upheld the decree in place as valid and proceed to find the said application unmerited and dismissed it.
8. What is before me is yet another application seeking the following orders:
  - a. Spent.
  - b. That this Honourable Court may be pleased to review and set aside the Ruling and orders issued in this matter on the 23<sup>rd</sup> July, 2020 and upon review, the Honourable Court do order a re-hearing of the case or make such other orders to meet the ends of justice.
  - c. That upon the grant of review Order 2 above, this Honourable Court be pleased to set aside *ex-debito justitiae* the Judgement and orders made on 7th April, 2015 by Hon. D. A. Okundi (R.M) In the Chief Magistrate's Court at Kiambu Land case No.1 of 2010 *Thebrous Chege Kinuthia -vs- Ruth Wambui & Teresia Wanjiku* adopting the Land Disputes Tribunal, Kiambu award over L.R Thindigua 76/748 together with all consequential orders and grant any appropriate relief it deems fit that will serve the ends of justice.
  - d. That upon the grant of review Order 2 above, this Honourable Court be pleased to set aside *ex-debito justitiae* the Judgement and orders made on 27th September, 2017 by Hon. J. Kituku In the Chief Magistrate's Court at Kiambu Land case No.1 of 2010 *Thebrous Chege Kinuthia -vs- Ruth Wambui & Teresia Wanjiku* adopting the Land Disputes Tribunal, Kiambu award over L.R Thindigua 76/748 together with all consequential orders and grant any appropriate relief it deems fit that will serve the ends of justice.
  - e. That upon the grant of review Order 2 above, this Honourable Court be pleased to set aside *ex-debito justitiae* the Judgement and orders made on 5<sup>th</sup> June, 2018 by Hon. J. Kituku In the Chief Magistrate's Court at Kiambu Land case No.1 of 2010 *Tedrous Cbege Kinuthia -vs- Ruth Wambui & Teresia Wanjiku* adopting the Land Disputes Tribunal, Kiambu award over L.R Thindigua 76/748 together with all consequential orders and grant any appropriate relief it deems fit that will serve the ends of justice.
  - f. That upon the grant of prayer 2 above, this Honourable Court be pleased set aside *ex-debito justitiae* the proceedings made by the Land Dispute Tribunal at Kiambu and the award of the said Kiambu Land Dispute Tribunal, Kiambu District Dispute No. LNDI16120/22/2009 over L.R No. Thindigua 76/748 and the award read on the 7th January, 2010 be set aside.



- g. That an order of this Honourable Court do issue to the Thindigua Company Limited and the Chief Land Registrar to rectify their respective record and reinstate Land Parcel No. Thindigua 761748 to the names of the Applicants herein Ruth Wambui and Teresiah Wanjiku and that the name of the Plaintiff Thedrous Chege Kinuthia is ordered erased, vacated and/or deleted from the record and/or the land register to the above parcel of land.
  - h. That upon the review the office of the Land Registrar and County Surveyor, Kiambu be ordered by this Honourable Court to move to the ground and correct the boundary between Land parcels No LR. Thindigua 76/747 and LR.Thindigua 76/748.
  - i. That this Honourable Court be pleased to order the Plaintiff/Respondent by himself, his agents and servants or any persons claiming under them be restrained from entering into, from trespassing, from leasing, from selling, from alienating, from disposing, from subdividing, from charging or in any other way whatsoever from interfering with Land parcel No.Thindigua 76/748 and from having any dealings over the above land pending the hearing and determination of this application.
  - j. That the Court be pleased to order the stay of execution of the decree dated 07.04.2015 and the eviction order dated the 30.05.2018 made against the Defendants/Applicants pending the hearing and determination of this application.
  - k. The cost of this application be in the cause.
9. The Plaintiff/Respondent filed a Replying Affidavit sworn on 25/05/2025 together with Grounds of Opposition of even date. The Respondent averred that the application dated 27/03/2025 is unprocedural, fatally incompetent, an afterthought, misconceived, bad in law and amounts to an abuse of the Court process and ought to be struck out with cost as it grossly offends Section 8 of the [Land Dispute Tribunal Act](#) (repealed).
  10. He further avers that where a statute establishes a dispute resolution mechanism, that mechanism must be followed and exhausted, where a party fails to do so they cannot be heard to say that their rights were denied. That the Applicant came to Court before ensuring that they had exhausted all the available remedies to resolve the dispute that is appealing the decision of the Land Dispute Tribunal to the Provincial Appeals Committee.
  11. He has stated that the Tribunal had the matter registered as Dispute No. LND/16/20/22/2009 and it delivered its decision on 7/01/2010 in the presence of both parties giving 30 days chance for appeal to the Provincial Appeals Committee subject to Section 8 (1) of the [Land Dispute Tribunal Act](#) (repealed). Additionally, he annexed as 'TCK-1' a copy of the decision.
  12. According to the Respondent, subject to Section 8(8) of the [Land Dispute Tribunal Act](#) (Repealed), the decision of the Provincial Appeals Committee ought to have been final on any issue of fact and appeal could only be brought on a point of law to the High Court (read ELC) within 60 days upon certification by a Judge that the law issue existed. But the Applicants herein never filed any appeal not even to the Provincial Appeals Committee in the province where the subject land is located. The award was adopted in the Chief Magistrate's Court on 7/04/2015 and a copy is annexed as 'TCK-2'.
  13. Whereas the Defendants/Applicants had made an application to challenge the jurisdiction of the Kiambu Magistrates Court in the adoption of the Elders Award on pecuniary basis, Lady Justice Gacheru addressed the issue through the Ruling delivered on 7/04/2015 and dismissed the application for failure of the Applicants to follow the right procedure and she affirmed the Jurisdiction of the Magistrate's Court in her Ruling.



14. At the same time the Defendants filed for a Judicial Review orders of Certiorari against the decision of the Tribunal and Justice Odunga dismissed the said application on 22/06/2015 since there was no satisfactory reason given why the application was brought 5 years after the Award and not within the prescribed 6 months. The decision of Justice Odunga is annexed as ‘TCK-3’.
15. It is the Respondent’s averment that Section 8 of the *Land Dispute Tribunal Act* (repealed) clearly provided for procedure to be followed by the litigants who were aggrieved by the decision of the Tribunal but the Applicants ignored this procedure.
16. Further the Respondent contends that the instant application is Res Judicata and it offends the provisions of Section 7 of the *Civil Procedure Act* and since litigation must come to an end then the application should be dismissed.
17. That since the Defendants/Applicants have previously made an application dated 2/12/2018 seeking to set aside the proceedings and the award of the Land Dispute Tribunal, the record herewith shows that the Applicants are seeking similar orders as they made in the above-mentioned application. However, that Justice Gacheru upheld the decree of land issued and dismissed the application as evidence via annexure ‘TCK-4’.
18. It is the observation of the Respondent that the instant application apart from being unprocedural that it does not meet the threshold of review it is Res Judicata.
19. That Section 23 (3)(e) of the *Interpretation and General Provisions Act* preserves and protects the decision and the awards made by the defunct Land Dispute Tribunal that was duly adopted by the Kiambu Magistrates Court. At the same time, it preserves and protects Judgments adopted and pronounced by Kiambu Magistrate Court in Land Case No. 1 of 2022 within the framework of the repealed *Land Dispute Act*.
20. The Respondent observes that the instant application does not meet the threshold for grant of review as it is not grounded under Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 as there are no errors or mistakes or new evidence apparent on the face of the record. It is trite that a review is only necessary to correct an apparent error or omission on the part of the Court and the error or omission must be self-evident requiring no elaborate argument to be established. This standard has not been established by the Defendants/Applicants.
21. Further, what is alleged to be new evidence is subject to an active Court case and the Court is yet to pronounce itself and therefore it cannot be considered as discovery of new evidence in this matter.
22. At the same time the Respondent filed Grounds of Opposition in which I note the Respondent reiterated the content as contained in the Replying Affidavit and I see no need of reproducing the same here.
23. In response the Defendants/Applicants filed a Supplementary Affidavit sworn by Elizabeth Wairimu Macharia has a Power of Attorney as a Donee from the 1<sup>st</sup> Applicant and authority to represent the 2<sup>nd</sup> Applicant. The gist of the Affidavit is that the Magistrate’s Court had no jurisdiction to adopt the award since the procedure is that the matter should have been filed in the Magistrate’s Court and then referred to the elders sitting in the Land Dispute Tribunal of Kiambu Municipality and then their decision would be taken back to the Magistrate’s Court for adoption.
24. That failure to follow this procedure rendered the entire process a nullity since the Land Dispute Tribunal had no jurisdiction and the Chief Magistrate’s Act of adopting the award is null and void ab initio.



25. The parties canvassed their application by way of written submissions. On their part the 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed their submissions dated 29/04/2025 and the Plaintiff/Respondent filed their submissions dated 25/05/2025. I have considered the submissions and the authorities relied upon in writing this Ruling.

### **Analysis and Determination**

26. I have considered the application for review of the Ruling rendered by Justice Gacheru Judgment rendered on 23/07/2020 and upon review do order a re-hearing of the case. At the same time the application seeks to have this Court set aside ex-debito justitiae the Judgment and orders made on 7<sup>th</sup> April, 2015 by Hon. D.A Okundi (R.M) in the Chief Magistrate’s Court at Kiambu Land Case No. 1 of 2010.

27. I have also considered the Grounds of Opposition and the issues raised in the Supplementary Affidavit for the application. The main issues for consideration are whether the Magistrate’s Court had jurisdiction to confirm the award and whether the application is merited. There are ancillary questions that I will answer in the process of resolving the main two issues as framed.

28. Jurisdiction is everything for a Court and where one finds that they have no jurisdiction they have to down their tools. In the instant case the Defendants/Applicants contend that the Magistrate acted without jurisdiction. It was the averment of the Applicants that the claimant should have filed their claim before the Magistrate’s Court and then gone before the Land Dispute Tribunal and back to Court to confirm or set aside the award.

29. Now the Land Disputes Tribunal was a primary body for resolving certain land disputes, but its decisions needed to be confirmed by a Court to have the force of a Judgment, meaning you would go to Court to have the award formally adopted rather than to re-litigate the entire case.

30. The jurisdiction of the Magistrate’s Court in respect of the Tribunal awards is set out in Section 7 of the [Land Disputes Tribunal Act](#) (Repealed) which provides as follows;

“7.

(1) The chairman of the Tribunal shall cause the decision of the Tribunal to be filed in the Magistrate’s Court together with any depositions or documents which have been taken or proved before the Tribunal.

(2) The Court shall enter Judgment in accordance with the decision of the Tribunal and upon Judgment being entered a decree shall issue and shall be enforceable in the manner provided for under the [Civil Procedure Act](#).”

31. Under Section 7 of the [Act](#), the Court has no jurisdiction to review the award or enter into a fresh inquiry to determine the correctness thereof. The Learned Magistrate erred in calling for the Survey Report and adopting the Surveyor’s Report as the Judgment of the Court. A party aggrieved by the decision of the Tribunal had a right of appeal to the Provincial Tribunal or seek an order for Judicial Review to quash the decision in appropriate circumstances. The award of the Tribunal must be adopted by the Court as it is.

32. Infact, it is my understanding that Section 7(1) of the [Land Disputes Tribunal Act](#) (repealed) is the one that endows the Magistrate with jurisdiction. Meaning, that once the Magistrate receives the award



from the Tribunal, his duty is confined to entering Judgment in accordance with the decision of the Tribunal. Indeed, the use of the word shall demonstrates that the Magistrate is under an obligation to enter Judgment as per the decision of the Tribunal.

33. The only situation I can imagine where the Magistrate can down his tools under Section 7 (2) of the *Land Disputes Tribunal Act* is if in fact the Tribunal has not filed any decision with the Court. However, once a decision is filed, the Magistrate is obliged to enter Judgment in accordance with that decision. In the case of *Mutemi Mwasya Vs Mutua Kasuva* H.C Civil Application No. 140 of 2011 (Machakos) Nambuye J (as she then was) held the same opinion and so did Kimaru J (as he then was) in the case of *Chrispus Gakui Vs Karanja Wainaina* 2006 E K.L.R. It is my considered opinion that the position held by the two Judges and others on the issue of jurisdiction is my shared view point too.
34. I therefore find and hold that the Magistrate’s decision unlike the contention made by the Applicants that it is a nullity not to be founded in law. The Magistrate’s Court had jurisdiction and the decision made was sound as per the provisions of Section 7 of the *Land Dispute Tribunal Act* (repealed).
35. The second issue I need to engage with is the one of review and or setting aside of this Court’s decision. The remedy of review is prescribed under Section 80 of the *Civil Procedure Act* as read together with Order 45 Rule (1) of the *Civil Procedure Rules*. Section 80 of the *Civil Procedure Act* provides 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.”

36. Order 45 Rule 1 of the *Civil Procedure Rules, 2010* provides that:

“ 1.

- (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.”

37. Based on the foregoing, there are three grounds which a party may prove to be granted orders of review:



- a. discovery of new and important evidence which was not within the knowledge of the Applicant or could not be produced at the time the orders were passed;
  - b. on account of a mistake or error apparent on the face of the record or
  - c. for any other sufficient reason.
38. The rationale for the remedy of review was set out by the Court of Appeal in the case of *Benjob Amalgamated Limited & another v Kenya Commercial Bank Limited* [2014] KECA 872 (KLR) as follows:
- “The basic philosophy inherent in the concept of review is acceptance of human fallibility and acknowledgement of frailties of human nature and sometimes possibility of perversion that may lead to miscarriage of justice. In some jurisdictions, Courts have felt the need to cull out such power in order to overcome abuse of process of Court or miscarriage of justice. 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 range 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.”
39. The Defendants/Applicants have through this application sought to review the Ruling of this Court delivered on 23/07/2020, on the grounds of new and important evidence that was not within the Applicant’s knowledge and could not be produced at the time the subject matter orders were made.
40. Let me start by examining the requirement that an application for review must be made without un-reasonable delay. The Ruling of this Court giving rise to this application was delivered on 23/07/2020 and this application was filed on 27/03/2025. That is a delay of four years and some months.
41. The Court in the case of *Eman Kamunya Kithaka Vs Peter Kinyua Kamunya* Kerugoya ELC No. 2 of 2015 (2017 E K.L.R), took the view that an un-explained delay of four (4) months was un-reasonable. There is also the decision in the case of Onyango – Otieno J. (As He Then Was) Who, In The Case Of *Kenfreigh E.A Ltd Vs Star East Africa Co. Ltd* 2002 2 K.L.R 783, found a delay of three (3) months to be un-reasonable. The law is that an application for review must be filed without unreasonable delay.
42. The Court of Appeal in the case of *Francis Origo & Another Vs Jacob Kumali Mungala* C.A Civil Appeal No. 149 Of 2001 (2005 2 K.L.R 307, held that:
- “In an application for review, an Applicant must show that there has been discovery of new and important matter or evidence which after due diligence was not within his knowledge or could not be produced at that time or he must show that there is some mistake or error apparent on the face of the record or that there was any other sufficient reason and most importantly, the Applicant must make the application for review without un-reasonable delay.” Emphasis added.
43. Having found that the delay herein is un-reasonable, I must dismiss this application. Even if there was no un-reasonable delay, this application was bound to fail for the simple reason that nothing has been placed before me to demonstrate that there is discovery of new and important matter or evidence which, after due diligence, was not within the Applicants knowledge or could not be produced at the time when the Judgment was delivered nor any mistake or error apparent on the face of the record or



indeed any other sufficient reason to warrant a review of this Court's Ruling made on 23/07/2020. From the Applicants' Supporting Affidavit, they appear to be averring that there is a criminal case that has been brought against the Respondent.

44. This however is not new information nor error apparent on the face of the Ruling made by this Court since it is a fresh Court case that is not hinged on the finding of this Court as per the Ruling made on 23/07/2020.
45. In the case of *Evan Bwire V Andrew Aginda* Civil Appeal No. 147 of 2006 cited in the case of *Stephen Gitbua Kimani V Nancy Wanjira Waruingi T/A Providence Auctioneers* (2016) eKLR the Court of Appeal held as follows:

“An application for review will only be allowed on strong grounds particularly if its effect will amount to re-opening the application or case afresh. In other words, I find no material before me to demonstrate that the Applicant has demonstrated the existence of new evidence which he could not get even after exercising due diligence.”

46. The current Application falls under the above category. The effect of allowing it would amount to re-opening the case afresh. Litigation must come to an end. Parties must present all the facts, documents and evidence in Court at the appropriate time before the Court retires to write its Judgment. Time and time again Courts have advised litigants that they are bound by their pleadings and that you do not prosecute your case piecemeal. Just by examining the many steps this case has gone through the litigants seem to be trying any other new idea that comes to their mind in an attempt to have themselves heard over and over. However, having landed in this Court again means we now need to close this re-litigation chapter. As the Swahili saying goes “Kubali yaishe”
47. I will not examine the other prayers made because the finding that the application is overtaken by lapse of time which is inordinate makes any effort to examine other issues in the application superfluous.
48. It is clear that the Applicants have not met the threshold for review of this Court's Ruling delivered on 23/07/2020. There is nothing either in the application itself or the Supporting Affidavit to show what new and important matter or evidence has now been produced or any mistake or error apparent on the face of the record or any other sufficient reason as required by Order 45 Rule 1 (1) of the *Civil Procedure Rules*. If the Applicants are simply aggrieved by that Ruling, then the right cause is to file an appeal. The Notice of Motion dated 27/03/2025 lacks merit. It is hereby dismissed with costs to the Respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 8<sup>TH</sup> DAY OF OCTOBER, 2025.**

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**MOGENI J**

**JUDGE**

In the presence of:-

Ms. Gitonga for the Plaintiff

Mr. Kibet holding brief for Mr. Arusei for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants

Melita – Court Assistant



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**MOGENI J  
JUDGE**

