



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Koome; CJ & P; Mwilu; DCJ & VP; Ibrahim, Wanjala, Njoki, Lenaola & Ouko, SCJJ)

**PETITION (APPLICATION) NO. E032 (E036), 35(E038) & 36(E039) OF
2022(CONSOLIDATED)**

BETWEEN

FANIKIWA LIMITED1ST APPELLANT

MARY JEPKEMBOI TOO & SOPHIE JELIMO TOO.....2ND APPELLANT

*(Suing as Joint Administrators of the ESTATE OF THE LATE MARK
KIPTARBEI TOO)*

LONRHO AGRIBUSINESS(EA) LIMITED.....3RD APPELLANT

DAVID KORIR.....4TH APPELLANT

AND

SIRIKWA SQUATTERS GROUP1ST RESPONDENT

THE COMMISSION OF LANDS.....2ND RESPONDENT

THE CHIEF REGISTRAR OF TITLES.....3RD RESPONDENT

DIRECTOR OF LAND ADJUDICATION.....4TH RESPONDENT

DIRECTOR OF SURVEY.....5TH RESPONDENT

DISTRICT LAND REGISTRAR UASIN GISHU.....6TH RESPONDENT

HIGHLAND SURVEYORS.....7TH RESPONDENT

KENNEDY KUBASU.....	8TH RESPONDENT
AHMED FEREJ & 60 OTHERS.....	9TH RESPONDENT
RICHARD KIRUI & 15 OTHERS.....	10TH RESPONDENT
STANBIC LIMITED.....	11TH RESPONDENT
KENYA COMMERCIAL BANK.....	12TH RESPONDENT
ECO BANK LIMITED.....	13TH RESPONDENT
MILLY CHEBET.....	14TH RESPONDENT
NATIONAL BANK OF KENYA LIMITED.....	15TH RESPONDENT
KENYA WOMEN MICROFINANCE BANK.....	16TH RESPONDENT
COMMERCIAL BANK OF AFRICA.....	17TH RESPONDENT
CO-OPERATIVE BANK OF KENYA.....	18TH RESPONDENT

(Being an Application for Review of the Judgment and Order of the Supreme Court (Koome; CJ & P, Mwilu; DCJ & VP, Ibrahim, Wanjala, Njoki, Lenaola & Ouko, SCJJ) delivered on 15th December 2023 in SC Petition No 32 (E036) of 2022 consolidated with Petition Nos. 35 (E038) & 36 (E039) of 2022

Representation:

Mr. Ngatia SC for the 1st Petitioners

(Ngatia & Associates Advocates)

Ms. Awour for 2nd Petitioner

(Prof. Tom Ojienda & Associates)

Ms Chesoo for the 3rd & 4th Petitioners

(M/S Kalya & Company)

Mr. Kenei for the 1st Respondent/Applicant

(Kenei & Associates Advocates LLP)

Ms. Odwa for the 9th Respondent

(Nyairo & Co Advocates)

Ms. Nasongo For the 10th Respondent

(Z.K Yego Law Offices)

Mr. Kiprotich For the 11th 12 & 15th Respondents

RULING OF THE COURT

A. INTRODUCTION

[1] The Applicant/1st Respondent, Sirikwa Squatters Group, filed an Application before this Court, dated 11th August, 2025, pursuant to Section 21, 21A and 23 of the Supreme Court Act and Rule 32 of the Supreme Court's Rules. The Application seeks inter alia, to review the judgment of this Court dated 15th December, 2023, to the effect that it only affects the trial Court's judgment dated 9th February, 2017, and not the reviewed ruling dated 10th November, 2017 and/or in the alternative, that this Court does render/offer an interpretation on the implication of its judgment dated 15th December, 2023, on the trial court's reviewed ruling of 10th November, 2017.

B. BACKGROUND

[2] On 15th December, 2023, this Court set aside the decisions of the trial court and the Court of Appeal in their entirety, and allowed the appeal in ***Fanikiwa Limited & 3 others Vs Sirikwa Squatters Group & 17 others [2023] KESC 105 (KLR)***

[3] Dissatisfied by our Judgment of 15th December, 2023, the Applicant/1st Respondent, Sirikwa Squatters Group, filed a Notice of Motion dated 20th December 2023, seeking a review of the said judgment.

[4] In our ruling of 31st May, 2024, we dismissed the Applicant/1st Respondent's Application for review. We stated as follows:

“28. Looking at the issues raised by the Applicant, we are unable to see how any of the grounds and allegations fall within the parameters of our jurisdiction of review. At best, the notice of motion is an appeal, disguised as an Application for review. The

*Applicant is clearly looking to have the Court reconsider and relook the entire judgment and overturn it, which this Court has no jurisdiction to do. In **Fredrick Otieno Outa Vs Jared Odoyo Okello & 3 Others, SC Petition No. 6 of 2014; [2017] eKLR**, this Court held that it does not have the jurisdiction to sit on appeal over its own decisions. Further, that an Application for review is not an appeal and it is not meant to give a litigant another bite at the cherry.”*

[5] Upon dismissal of the Application of 20th December, 2023, the Applicant/ 1st Respondent moved back to the trial court in **Sirikwa Squatters Group Vs Commissioner of Lands & 9 others (ELC Petition 4 of 2016) (2025) KEELC 4308 (KLR)**, vide an Application dated 20th September, 2024, seeking among other orders, an interpretation of its review ruling dated 10th November, 2017 vis-a-vis its judgment of 9th February, 2017. This Application was opposed by way of preliminary objections filed by the 7th Respondent dated 14th November, 2024 and the 6th and 8th Respondents dated 13th December, 2024. The gist of the preliminary objections was that, the trial court lacked jurisdiction to entertain the Applicant/ 1st Respondent’s Application, on grounds that the Supreme Court in its judgment of 15th December, 2023, had set aside in entirety the judgments and orders of the trial and appellate court.

[6] In its ruling of 21st May, 2025, the trial court (*C.K Yano, J*) held that the ruling of 10th November, 2017, did not replace its judgment of 9th February, 2017. The trial court went on to find that since the Supreme Court had set aside the judgments and orders of the Court of Appeal and those of the ELC in their entirety, the decisions of the trial court (ELC) with respect to the suit parcels of land, were no longer operational and had been rendered obsolete, therefore there was no use for the court to give an interpretation of the review ruling of 10th November, 2017. Further, the trial court held that, if the Applicants/1st Respondent indeed wanted to seek any interpretation, it should have been on the Judgment of the Supreme Court, which was the only operative decision where the suit land was concerned, and that any such

interpretation would only be given by the Supreme Court, which was the court that rendered that decision. The trial court consequently dismissed the Application.

[7] It is the ruling of 21st May, 2025, by the trial court that has prompted the Application now before us.

C. PARTIES' SUBMISSIONS

a) Applicant/ 1st Respondent Submissions.

[8] The Applicant claimed that the trial court's review ruling of 10th November, 2017, invalidated its judgment of 9th February, 2017, and that the said review ruling, rendered the decisions of the Court of Appeal and the Supreme Court a nullity, as the said decisions emanated from a decision that had been set aside by the trial court. Further, that none of the parties had lodged an appeal against the reviewed ruling, therefore the instant proceedings should not affect the said ruling.

[9] On whether the Application had met the threshold for review, the Applicant submitted that the Application was within the limited scope provided for review and urged the Court to look beyond the review question, and consider the need to offer a clarification and/or interpretation of its Judgment of 15th December, 2023, to the extent that it only affected the trial court's judgment of 9th February, 2017 and not the review ruling of 10th November, 2017.

b). 1st, 2nd, 3rd and 4th Petitioners' Submissions.

[10] The 1st Petitioner filed a replying affidavit dated 3rd September, 2025, and submission dated 5th September, 2025. The 2nd Petitioner filed a preliminary objection dated 2nd September, 2025, while the 3rd and 4th Petitioners filed a replying affidavit and submissions dated 4th September, 2025, wherein they all raised similar issues that, the Application was barred by the doctrine of *res judicata*, the issues having been conclusively determined by this court, and that the court having already issued its final judgment and having dismissed the subsequent review Application

was *functus officio*. Further that the Application had failed to meet the threshold for review.

b) 9th ,10th ,11th ,12th and 15th Respondents' Submissions.

[11] The 9th Respondents opposed the Application vide a replying affidavit and submissions dated 15th September, 2025, on grounds that this Court was *functus officio* in so far as determining any rights of the parties in this matter over the subject properties. Further, that the Application had not met any conditions to warrant a review of the judgment of 15th December, 2023. The 10th Respondents filed their grounds of opposition and submissions dated 8th September, 2025, on similar grounds, and hastened to add that the matter was barred by the doctrine of *res judicata*.

[12] The 11th ,12th and 15th Respondents filed their joint grounds of opposition and submissions dated 8th September, 2025, on grounds that the Application failed to meet the threshold for grant of review under Section 21A of the Supreme Court Act 2011, and that while the prayers were disguised as seeking review, the effect was in fact an appeal against the Judgment of 15th December, 2023.

D. ANALYSIS & DETERMINATION

[13] From our perusal of the Application and the positions adopted by the parties, one issue arises for our disposal as follows:

i. Whether the Applicant has established a basis for the review of this Court's decision?

[14] This Court has been called upon to review and/or interpret the implication of its Judgment dated 15th December, 2023, on the trial court's review ruling of 10th November, 2017.

[15] The provisions of Section 21A of the Supreme Court (Amendment) Act, No.26 of 2022 as well as Rule 28(5) of the Supreme Court Rules, 2020, together with the principles enunciated in **Fredrick Otieno Outa Vs. Jared Odoyo Okello & 3 others**, SC Petition No. 6 of 2014; [2017] eKLR; which nearly all the parties have relied on, stated this Court’s power to review its own decisions as follows: “as a general rule, the Supreme Court cannot sit on appeal over its own decisions, or to review its decisions, save to correct obvious errors apparent on the face of the decision. However, in exercise of its inherent powers, the Court may, review its decision(s) “in exceptional circumstances, so as to meet the ends of justice.”

It will do so in instances where:

“(i) the Judgment, Ruling, or Order, is obtained, by fraud or deceit;

(ii) the Judgment, Ruling, or Order, is a nullity, such as, when the Court itself was not competent;

(iii) the Court was misled into giving Judgment, Ruling or Order, under a mistaken belief that the parties had consented thereto;

(iv) the Judgment or Ruling, was rendered, on the basis of a repealed law, or as a result of, a deliberately concealed statutory provision.”

[16] Applying these conditions to the Application before us, we have no hesitation in declaring that as framed, the Application falls short of the exceptional circumstances, and we decline the invitation to exercise the Court’s limited discretion to review the judgment. A review as envisaged by Section 21A and Rule 28(5) aforesaid, concerns the decision of this Court and not any other court below it. The Applicant did not demonstrate that the judgment of this Court of 15th December, 2023, was obtained by fraud and/or deceit or in what way it was a nullity. Neither

did the Applicant demonstrate that there was an error apparent on the face of the decision of this Court.

[17] We recall that this is not the first time the Applicants/1st Respondents have brought an Application for review of this Court's decision of 15th December, 2023, having previously done so in **Sirikwa Squatters Group Vs Fanikiwa Limited & 20 others**; [2024] KESC 23 (KLR), where in dismissing the Application, we reiterated our position on the conditions that must be met for a party to invoke this Court's jurisdiction to review its judgments.

[18] In our view, the Applicant is not seeking a review of our decision but rather, attempting to enforce our orders as it has understood them. This is untenable. This Court must, at this point in time, emphasize the fact that there has to be an end to litigation. The principle of finality must be applied in appropriate instances so as to avoid Courts relitigating on settled matters. As demonstrated elsewhere in this ruling, the Applicants/1st Respondents have been filing Application after Application, and it is our opinion that they are being outrightly mischievous. Having authoritatively made our decision in **Fanikiwa Limited & 3 others Vs Sirikwa Squatters Group & 17 others (Supra)**, it was this Court's expectation that all parties thereto, would act in accordance with what the Court ordered.

[19] In **Cogno Ventures Limited & 4 others Vs. Bia Tosha Distributors Limited & 15 others; Kenya Breweries Limited & 6 others (Interested Parties); Ferran & 24 others (Contemnor)** (Application E005, E006 & E012 of 2023 (Consolidated)) [2023] KESC 33 (KLR), we held that it is not for this Court to interpret its decisions or those of other courts to the different litigants. With the issuance of the judgment, the court became *functus officio*. We hold the same position in this matter.

[20] This Court, will therefore, not spend its limited judicial time on this matter any further. The matter has to come to an end.

COSTS

[21] On costs, the general rule in this Court as we held in ***Jasbir Singh Rai & 3 others Vs Tarlochan Singh Rai & 4 others***, SC Petition No. 4 of 2012; [2014] eKLR, is that costs follow the event. We therefore deem it fit that the Applicant/1st Respondent shall bear the costs of this Application.

G. ORDERS

[22] Consequently, we make the following orders:

- i. The Application dated 11th August 2025 be and is hereby dismissed; and;***
- ii. The Applicant/1st Respondent shall bear the costs.***

It is so ordered.

DATED and DELIVERED at NAIROBI this 11th day of December, 2025.

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M.K. KOOME
CHIEF JUSTICE & PRESIDENT
OF THE SUPREME COURT

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P.M. MWILU
DEPUTY CHIEF JUSTICE & VICE PRESIDENT
OF THE SUPREME COURT

.....
M.K. IBRAHIM
JUSTICE OF THE SUPREME COURT

.....
S.C. WANJALA
JUSTICE OF THE SUPREME COURT

.....
NJOKI NDUNGU
JUSTICE OF THE SUPREME COURT

.....
I. LENAOLA
JUSTICE OF THE SUPREME COURT

.....
W. OUKO
JUSTICE OF THE SUPREME COURT

**I certify that this is a true copy
of the original**

REGISTRAR
SUPREME COURT OF KENYA

