



Brian Otieno and Company Advocates v Jiangxi Jian Tai Water Conservancy and Electrical Powers Constructions (Kenya) Limited (Environment & Land Miscellaneous Case E001 of 2024) [2025] KEELC 2838 (KLR) (25 March 2025) (Ruling)

Neutral citation: [2025] KEELC 2838 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE E001 OF 2024
JA MOGENI, J
MARCH 25, 2025**

BETWEEN

BRIAN OTIENO AND COMPANY ADVOCATES APPLICANT

AND

JIANGXI JIAN TAI WATER CONSERVANCY AND ELECTRICAL POWERS CONSTRUCTIONS (KENYA) LIMITED RESPONDENT

RULING

1. The Defendant's Application is dated 7/06/2024. Therein, they seek the following Orders:
 - a. Spent
 - b. That this Honorable Court be pleased to review the Orders issued by Honorable Justice Mogeni J, set aside the said Orders and certify the Notice of Motion dated 31/05/2024 as extremely urgent.
 - c. That this Honorable Court be pleased to stay the execution of the Orders issued by this Court on 6/02/2024 pending the hearing and determination of this Application
 - d. The Honorable Court be pleased to set aside the consent Order dated 6/02/2024.
 - e. That costs of this Application be provided for.
2. The Application is premised on various grounds set out at its foot and in the Supporting Affidavit of Hongjin Gan the Director of the Judgment Debtor thereto attached. In brief they are that the Respondent through the firm of Mbeki Auctioneers has visited the Judgment Debtor's offices threatening to carry all the office furniture and moveable property within the property belonging to the Judgment Debtor relying on a Consent obtained fraudulently and illegally.



3. That the Applicant intends to demonstrate that the Consent the Decree Holder is relying on is fraudulent in nature as it was not signed by a Director of the Applicant or any person with authority to sign documents on behalf of the Applicant. That is the Orders herein are not issued the Applicant will proceed with execution rendering the Application nugatory.
4. In response, the Plaintiff/Applicant filed a Replying Affidavit dated 13/06/2024 where he averred that there is no discovery of new evidence to warrant a review and neither has the Applicant met the conditions for grant of a stay.
5. The Application was disposed of by way of written submissions of both parties which I have considered while preparing the present Ruling.

Analysis and Disposition

6. What this Court is dealing with here is a review Application. Review is governed by Section 80 of the [Civil Procedure Act](#) and Order 45 rule 1 of the [Civil Procedure Rules](#).
7. Section 80 of the [Civil Procedure Act](#) provides as follows:
 - “ 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. Order 45 Rule 1 of the [Civil Procedure Rules](#) 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.
 - (2) A party who is not appealing from a Decree or Order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the Applicant and the appellant, or when, being Respondent, he can present to the appellate Court the case on which he applies for the review.”



9. Has the Applicant made a good case for review and setting aside of the Court Order issued by this Court on 06/02/2024?
10. It is clear from the said provisions that it is the Court that has passed a Decree or made an Order that can review that Decree or Order, including by setting it aside or quashing it. In the present case the Ruling sought to be set aside and quashed was delivered by Hon. Vincent Kiplagat, Deputy Registrar ELC and it is for the said Court to review the said Ruling and not this Court, unless and/or until the suit in the lower Court has been transferred to this Court. The jurisdiction of this Court in relation to the Ruling delivered by the lower Court is therefore in the circumstances only an appellate jurisdiction, and the provisions of the Civil Procedure Act and Rules as to the hearings of appeals are the ones to be observed in this regard.
11. At the same time the Applicant in the Application is seeking a substantive Order of setting aside/ vacating, an Order issued in the lower Court on 06/02/2024. The Applicant seeks this Order without filing an appeal before this Court. My perusal of the proceedings reveal that the Orders by the lower Court was a consent Order.
12. That Order was entered by consent by the two parties herein before Hon. Dr Vincent Kiplagat. Again this Court can only interfere with the consent Order if there are good grounds and if the matter is referred to this Court via appeal. As it were I am not seized of the matter. The Application is erroneously before me.
13. Given the foregoing, I strike out the Application placed before the wrong Court in its entirety. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 25TH DAY OF MARCH 2025 VIA MICROSOFT TEAMS.

MOGENI J

JUDGE

In presence of: -

Mr. Lumumba holding brief for Mr. Otieno for the Applicant

Ms. Munda holding brief for Mr. Eredi for the Respondent

Melita - Court Assistant

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MOGENI J

JUDGE

