



Republic v Permanent Secretary Ministry of Higher Education & 2 others; Gideon Indech t/a Interglobal Academic Consortium (Exparte Applicant) (Judicial Review Miscellaneous Application E049 of 2022) [2023] KEHC 25955 (KLR) (Judicial Review) (30 November 2023) (Ruling)

Neutral citation: [2023] KEHC 25955 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E049 OF 2022
JM CHIGITI, J
NOVEMBER 30, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

**PERMANENT SECRETARY MINISTRY OF HIGHER EDUCATION 1ST
RESPONDENT**

**THE CHIEF EXECUTIVE OFFICER COMMISSION FOR UNIVERSITY
EDUCATION 2ND RESPONDENT**

**DIRECTOR OF STATE DEPARTMENT HIGHER EDUCATION 3RD
RESPONDENT**

AND

**GIDEON INDECHE T/A INTERGLOBAL ACADEMIC
CONSORTIUM EXPARTE APPLICANT**

RULING

1. The application before this Court is dated 20th June,2023 and it seeks the following orders;
 - i. Spent.
 - ii. That, this Honourable Court be pleased to review and set aside its orders dated 25th May,2023 dismissing the Notice of Motion dated 20th May,2022 as the same has been reviewed and complied with order 53 rule 4(1) of the Civil Procedure Rules 2010.



- iii. That, costs of this application be provided for.
2. The application is supported by the Supporting Affidavit of Gideon Indech sworn on 20th June, 2023.
 3. The *Ex parte* Applicant's case is that having complied by attaching a Statutory Statement that complies with the provisions of Order 53 of the [Civil Procedure Code](#) this Honourable Court ought to review and set aside its orders dated 25th May, 2023 dismissing the *Ex parte* Applicant's Notice of Motion as the then attached Statutory Statement and Affidavits did not comply with Order 53 Rule 4 (1) of the [Civil Procedure Rules](#), 2010.
 4. The *Ex parte* Applicant also filed written submissions dated 6th July, 2023 and in the Submissions it is argued that pursuant to Article 47 of the [Constitution](#) the *Ex parte* Applicant has a right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair in the circumstances. Further that the *Ex parte* Applicant's students right or fundamental freedoms are likely to be adversely affected by the 1st, 2nd and 3rd administrative action and that they must be given written reasons for their actions.
 5. The Applicant cites Section 80 of the [Civil Procedure Act](#) and Order 45 on review. The *Ex parte* Applicant submits that he has discovered that at the time of filing his earlier application he had not attached copies of the statement accompanying the application for leave and the Notice of Motion and that now he has complied.
 6. The Respondents have not filed any response or written submissions.

Analysis And Determination

7. Upon considering the Application before this Court, the Affidavit in support and the written submissions by the *Ex parte* Applicant I find that one issue crystallizes for determination and that is whether the orders sought by the *Ex parte* Applicant are merited.
8. The law on review/setting aside of a court's order is now settled. It is also trite that the High Court has power to review its own decisions, however it must be emphasized that such power must be exercised within the framework of Section 80 of [Civil Procedure Act](#) and Order 45 Rule 1.
9. Section 80 of the [Civil Procedure Act](#) provides thus: -
 - “ 80. 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 judgement to the court, which passed the decree or made the order, and the court may make such order thereon as it thinks fit.
10. Similarly, Order 45 Rule 1 of the [Civil Procedure Rules](#), 2010 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 review of judgement to the court which passed the decree or made the order without unreasonable delay.”

11. The above Rule summarizes the instances when a court can review or set aside its Orders and these are in a case where the Applicant discovers a 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, where there is a mistake or error apparent on the face of the record, or for any other sufficient reason.

12. The Court in the case of *Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya* [2019] eKLR held as follows on review;

“27. A court can review a judgment for any other sufficient reason. In the case of *Sadar Mohamed v Charan Singh and Another*^[16] it was held that any other sufficient reason for the purposes of review refers to grounds analogous to the other two (for example error on the face of the record and discovery of new matter. Mulla in the Code of Civil Procedure^[17] (writing on Order 47 Rule 1 of the Civil Procedure Code of India), (the equivalent of our Order 45 Rule 1), states that the expression ‘any other sufficient reason’...means a reason sufficiently analogous to those specified in the rule. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out..., would amount to an abuse of the liberty given to the tribunal under the Act to review its judgement.^[18]

28. I also find useful guidance in *Tokesi Mambili and others v Simion Litsanga*^[19] where they held as follows:-

- i. In order to obtain a review an applicant has to show to the satisfaction of the court that there has been discovery of new and important matter or evidence which was not within his knowledge or could not be produced at the time when the order to be reviewed was made. An applicant may have to show that there was a mistake or error apparent on the face of the record or for any other sufficient reason.(Emphasis added)
- ii. Where the application is based on sufficient reason it is for the Court to exercise its discretion.”



13. The Court went ahead to state as follows;

“29. I am not persuaded that the reasons offered by the applicant amounts to ‘sufficient reason’ within the meaning of the rules cited above nor is it analogous or ejusdem generis to the other reasons stipulated in Order 45 Rule 1. My finding is fortified by the holding in the case of *Evan Bwire v Andrew Nginda* where the court held that ‘an application for review will only be allowed on very strong grounds particularly if its effect will amount to re-opening the application or case a fresh.

30. The principles which can be culled out from the above noted authorities are:-

- i. A court can review its decision on either of the grounds enumerated in Order 45 Rule 1 and not otherwise.
- ii. The expression "any other sufficient reason" appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds.
- iii. An error which is not self-evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of record justifying exercise of power under Section 80.
- iv. An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
- v. A decision/order cannot be reviewed under Section 80 on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.
- vi. While considering an application for review, the court must confine its adjudication with reference to material, which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.
- vii. Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.
- viii. A mistake or an error apparent on the face of the record means a mistake or an error, which is prima-facie visible and does not require any detail examination. In the present case the petitioner has not



been able to point out any error apparent on the face of the record.

- ix. Section 80 of the Civil Procedure Code provides for a substantive power of review by a civil court and consequently by the appellate courts. The words occurring in Section 80 mean subject to such conditions and limitations as may be prescribed thereof and for the said purpose, the procedural conditions contained in Order 45 Rule 1 must be taken into consideration. Section 80 of the Civil Procedure Code does not prescribe any limitation on the power of the court, but such limitations have been provided for in Order 45 Rule 1.
- x. The power of a civil court to review its judgment/ decision is traceable in Section 80 CPC. The grounds on which review can be sought are enumerated in Order 45 Rule 1.”

- 14. In the case before this Court the *Ex parte* Applicant seeks for this Court to review and/or set aside its decision of 25th May,2023 on grounds that it has complied with Order 53 rule 4 (1) of the Civil Procedure Rules.
- 15. Obviously as stated above this does not form one or any of the grounds for review/setting aside of a court’s order and therefore the *Ex parte* Applicant’s application must therefore fail.

Order

The *Ex parte* Applicant’s Notice of Motion dated 20th June,2023 is hereby dismissed with no orders as to costs. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF NOVEMBER 2023

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J. CHIGITI (SC)

JUDGE

