



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

MISC. CIVIL APPLICATION NO. 125 OF 2019

FRIENDS CHURCH (QUAKERS) NAIROBI YEARLY MEETING...APPLICANT/CLIENT

-VERSUS-

ONSONGO & CO. ADVOCATES RESPONDENT/ADVOCATE

RULING

The application before me is for the review of the Ruling dated 20th April 2021.

1. By the said Ruling, I held that the Reference from Taxation had been filed late. When computing the 14 days period, I placed reliance upon the affidavit sworn by **SUSSIE AGOI**, in which she stated that the reasons for the decision of the taxing master were supplied on 4th November 2020.
2. Based upon that deposition, I held that the reference ought to have been filed by 19th November 2020.
3. But the Applicant has asserted that there was an error apparent on the face of the record. The alleged error is said to stem from the fact that whilst the letter from the taxing officer is dated 4th November 2020, the letter was actually delivered to the Applicant on 9th November 2020.
4. It is well settled that when a party is seeking review, he must demonstrate that his case falls within the ambit of **Section 80** of the **Civil Procedure Act**, and **Order 45** of the **Civil Procedure Rules**.
5. In this instance, the application is premised on the grounds that there is an error apparent on the face of the record.
6. It is well settled that when the Applicant asserts that there was an error apparent on the face of the record, he must demonstrate that the said error was apparent or obvious. That which is apparent or obvious, should be so manifest and glaring, that it does not need to be searched for.
7. In effect, an error apparent on the face of the record is, first, an error; and second, it must be that about which there cannot be two different opinions.
8. It is the kind of mistake that anybody looking at the record will readily say “*that is an error.*”
9. When such an error is found on the record, the Court was obliged to correct it.
10. In the case of **NYAMOGO & NYAMOGO ADVOCATES Vs MOSES KIPKOLUM KOGO, CIVIL APPEAL NO. 322 OF 2000**, (which was cited by the Applicant), the Court of Appeal held as follows;

“..... there is a distinction between a mere error and an error apparent on the face of the record; and that where an error on a substantial point of law stares one in the face, and could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out.

However, an error which has to be established by a long drawn process of reasoning or on points where there are conceivably two opinions, can hardly be said to be an error apparent on the face of the record, neither can a view adopted by the Court in the original record, if a possible one, be an error apparent on the face of the record even though another view is also possible: mere error or wrong or an erroneous view of evidence or of law is certainly no ground for review although it

may be a ground for appeal.”

11. The Applicant now states that there was an error because the letter supplying the reasons is dated 4th November 2020, but the said letter was not supplied or received by the Applicant until 9th November 2020.

12. I have taken into account the Applicant’s said position, and I have compared it to what was expressly stated by **SUSSIE AGOI** in her affidavit.

13. It was not the Court which interpreted the contents of the affidavit, to mean that the taxing officer had supplied the reasons to the Applicant on 4th November 2020.

14. It is Ms Agoi who expressly and explicitly stated thus;

“14. THAT the Applicant being dissatisfied with the decision of the taxing master, filed a Notice of Objection on 10th September 2020, stating grounds of objection and requested for reasons for the decision of the taxing master, which was supplied on 4th November 2020 vide a letter that stated that the reasons were as contained in the Ruling. Annexed herewith and marked “SA2” is a copy of the letter dated 4th November 2020.”

- emphasis mine.

15. Therefore, that which is apparent on the face of the record is a statement made on oath, disclosing that the reasons for the decision of the taxing officer were supplied on 4th November 2020. The said information was within the knowledge of the deponent.

16. This Court accepted the information exactly as it was presented. I therefore do not see the error, (apparent or otherwise), which the Court made.

17. I find that the Applicant is now trying to explain a statement which was clear and unequivocal.

18. The Applicant has deemed it necessary to make available some evidence, to show that the letter from the learned Deputy Registrar, (although dated 4th November 2020), was only received on 9th November 2020.

19. The fact that the Applicant has to make available other evidence, so as to persuade the Court that the letter in issue was received on a date which is different from that which was originally stated, means that the alleged error was not apparent on the face of the record.

20. Therefore, insofar as the application was founded upon the contention that there was an error apparent on the face of the record, I find that it lacks merit.

21. But the application was also founded upon the alternative grounds, that there were “*sufficient reasons*” that would warrant a review of the ruling made on 20th April 2020.

22. I have taken into account the fact that the delay in filing the reference was of one day. In other words, the delay was minimal.

23. Secondly, based upon the evidence which the Applicant has now provided to the Court, it is now clear that the communication from the learned Deputy Registrar was received on 9th November 2020.

24. In the circumstances, it would follow that the reference was filed within time. In the result, the dismissal of the reference is now set aside.

25. However, the Applicant will not be awarded the costs of the application dated 26th April 2021, because it was the deposition by their advocates which led the Court to make the original determination on the reference.

26. The Respondent has had to go through the process because of the earlier actions of the Applicant. If the Applicant had not, earlier stated that the reasons had been supplied on 4th November 2020, the present application would never have become necessary. I therefore order the Applicant to pay the costs of the application dated 26th April 2021.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 18TH DAY OF NOVEMBER, 2021

FRED A. OCHIENG

JUDGE