



**Odera Obar & Company Advocates v Oudia (Environment and Land Miscellaneous Application 163 of 2017) [2023] KEELC 18929 (KLR) (13 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18929 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 163 OF 2017**

**JE OMANGE, J**

**JULY 13, 2023**

**BETWEEN**

**ODERA OBAR & COMPANY ADVOCATES ..... APPLICANT**

**AND**

**JAMES OUDIA ..... RESPONDENT**

**RULING**

1. The applicants application dated February 28, 2023 was brought under certificate of urgency and prays for the following reliefs;
  - i. Spent.
  - ii. That the court be pleased to review and vary the orders made on February 9, 2023 that the Preliminary Objection has no merit and is hereby dismissed and substitute therefore an order that the preliminary objection is allowed and the chamber summons/ reference filed on December 5, 2018 be set aside.
2. The application is brought on the grounds that on the February 9, 2023 the court made an order that the preliminary objection has no merit and is dismissed. The applicant depones that there is an error on the face of the record as contrary to the observation of the court at paragraph 18 of the Ruling that the Respondent was granted 14 days to file a reference on November 13, 2018, the Respondent was only given leave to file a Response and submissions. The applicant also contends that the court did not consider the proceedings of December 5, 2018.
3. The application is supported by the affidavit of Maria Migiro in which she refers the court to paragraph 18 of the Ruling in which the court observed that the proceedings on November 13, 2018 were not clear. Counsel refers the court to the proceedings of December 5, 2018 in which the Respondent was not granted leave to file the reference out of time.



4. The Respondent filed a Replying Affidavit in which he averred that the Ruling exposed the gaps that were in the applicant's case and urged that the court faced with an unclear record and an affidavit by his counsel resolved the gaps in favour of the Respondent. The Respondent argued that the typed proceedings cannot be deemed to be new and important matter that would warrant a review.
5. As at the date of writing this Ruling on July 10, 2023 none of the parties had filed submissions in respect of the application.
6. The grounds upon which a court may review its orders are well defined by the law. Order 45 rule 1 of the *Civil Procedure Rules, 2010* provides as follows: -
  - “(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.”
7. The grounds for the court to exercise this power are; discovery of new and important matters not within the knowledge of the applicant; mistake or error on the face of the record or for any other sufficient cause.
8. It is indeed true that at the point of writing the Ruling, the court noted that from the handwritten proceedings it was not clear what other documents the Respondent had been allowed to file. The court thus resolved the issue in favour of the Respondent who had averred that leave was granted.
9. The typed proceedings have now been availed to the court. It is clear that contrary to the averment of the Respondents counsel's the court on November 13, 2022 granted the Respondent leave to file a response and written submissions. There was no order allowing extension of time to file a reference. The order of December 5, 2018 was similarly limited to filing of responses and submissions.
10. In view of this now clear record it is clear that there is an error apparent on the face of the record. The argument by the Respondent that the court had resolved the issue is not tenable in the face of the clear error.
11. Consequently, I find that the applicants application has merit and is allowed as follows;
  - a. That the orders made on February 9, 2023 are hereby reviewed and substituted with an order that the preliminary objection is allowed and the chamber summons/ reference filed on December 5, 2018 is struck out.
  - b. The applicant is to have costs of the application.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 13<sup>TH</sup> DAY OF JULY 2023.**  
**JUDY OMANGE**



## **JUDGE**

In the presence of: -

Mr. Nyiro for Applicant

Steve - Court Assistant

