



**Menjo v Mokoosio & another (Environment & Land Case
E075 of 2021) [2023] KEELC 21104 (KLR) (26 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 21104 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E075 OF 2021
LC KOMINGOI, J
OCTOBER 26, 2023**

BETWEEN

REHEMA CHEPKEMBOI MENJO PLAINTIFF

AND

MARTIN L. MOKOOSIO 1ST DEFENDANT

HIMS HOME LIMITED 2ND DEFENDANT

RULING

1. On 7th November 2022, the Plaintiff filed a Notice of withdrawal of suit which was duly marked and ordered withdrawn by this Court on 26th January 2023 with costs to the Defendants. Following this, the Defendants filed their Party and Party Bill of costs dated 2nd March 2023 for taxation and it was set down for taxation on 15th May 2023.
2. On 9th May 2023, the Plaintiff filed a Notice of Motion Application seeking Orders that;
 1. Spent
 2. The Application be placed before the Hon. Lady Justice L.C. Komingoi for her to review the order granting costs to the 1st and 2nd Defendants;
 3. There be a stay for taxation of the 1st and 2nd Defendants' Bill of Costs pending the hearing and determination of the arbitration.
3. This application is supported by the Affidavit of the Plaintiff/Applicant. The grounds are that the costs awarded to the Defendants were for the application dated 16th November 2021 and not for the entire suit; the Defendant's neither entered appearance nor filed their defence; the Defendant's Bill of costs was excessive and exorbitant and not in line with the Advocates Remuneration Order; and the Plaintiff would suffer loss and prejudice if the order granted was not reviewed



4. The Defendants filed their Grounds of Opposition dated 18th July 2023 contesting the Plaintiff's application on grounds that they were legally entitled to the costs awarded following their objection to the Plaintiff's suit; there was no mistake or sufficient grounds given to warrant the review of the Court's order; the application was akin to asking the court to sit on appeal over its decision which is what the Plaintiff should have done instead of seeking a review; the Plaintiff had responded to the Bill of Costs and filed its grounds for opposition and the Taxing Officer was clothed with jurisdiction to hear and determine any concerns regarding the Bill of costs.
5. This application was canvassed by oral submissions. The Plaintiff's counsel submitted that they had filed their dispute for arbitration following frustration of the contract by the Defendants. As such, they sought a review of the order of costs pointing out that prior to the filing of the Bill of Costs, the Defendants had asked to be paid Kshs. 100,000.
6. Counsel for the Defendants submitted that the application did not meet the threshold set in Section 80 of the *Civil Procedure Act* and Order 45 of the *Civil Procedure Rules* and there was no justification for review of the court order citing the case of *Paul Mwaniki vs NHIF Board of Management* [2020] eKLR. Counsel also submitted that the application amounted to asking the court to sit on its own appeal against the award of costs. He put forward the case of *Omote & Another vs Ogotu* [2022] KEHC 16441 (KLR). While seeking dismissal of the application, counsel pointed out that they had incurred expenses as a result of the Plaintiff's rush to court citing *DGM vs EWG* [2021] eKLR.

Analysis and Determination

7. I have considered the Notice of Motion, the affidavit in support, the response thereto, the rival submissions, and the authorities and cited. The issue for determination is:

i. Whether the Plaintiff's Notice of Motion dated 9th May 2023 seeking a review of the award of costs issued on 26th January 2023 to the Defendants is merited.

8. On the issue of review of court orders Section 80 of the *Civil Procedure Act* provides:

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.

Order 45, rule 1 further stipulates:

- (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.

9. Guided by these statutory provisions, courts have held that the grounds upon which orders for review can be obtained are: existence of an error or mistake apparent on the face of the record; discovery of new and important evidence which after the exercise of due diligence was not within the knowledge of the Applicant or could not be produced by him at the time when the order was made and sufficient reasons to occasion the review. The above grounds were restated by Mativo J. in *Republic v Cabinet Secretary for Interior and Co-ordination of National Government Ex parte Abulahi Said Salad* [2019] eKLR; where he held;

“ 12. A clear reading of the above provisions shows that section 80 gives the power of review while Order 45 sets out the rules. The rules restrict the grounds for review. They lay down the jurisdiction and scope of review. They limit review to the following grounds:-

- a) Discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or;
- b) On account of some mistake or error apparent on the face of the record, or
- c) For any other sufficient reason and whatever the ground there is a requirement that the application has to be made without unreasonable delay.

13. A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established.”

10. On the issue of reviewing decisions on the basis of an error apparent, the Supreme Court of Kenya in *Fredrick Otieno Outa v Jared Odoyo Okello & 3 others* [2017] eKLR stated:

“ ... the Slip Rule permits a Court of law to correct errors that are apparent on the face of the Judgment, Ruling, or Order of the Court. Such errors must be so obvious that their correction cannot generate any controversy, regarding the Judgment or decision of the Court. By the same token, such errors must be of such nature that their correction would not change the substance of the Judgment or alter the clear intention of the Court. In other words, the Slip Rule does not confer upon a Court, any jurisdiction or powers to sit on appeal over its own Judgment, or, to extensively review such Judgment as to substantially alter it.”

11. Further the Supreme Court in *Robert Tom Martins Kibisu v Republic* [2018] eKLR went on to further express itself on what correction of errors entails in the following words:

“ ... In that regard, while the application before the Court is framed as one seeking review for correction of errors apparent on the face of the record, the mischief is in the details. An application cannot be said to be for correction of errors when it is anchored and replicate



with allegation of discontentment with the Court’s finding and/or appreciation of legal principles and their interpretation thereof. Such dissatisfaction is normally a ground for appeal... We thus reiterate that an application for review of a Court’s judgment cannot call for the changing and/or altering of the Court’s final orders and findings drawn from the reasoning in the entire judgment...”

12. The application in the instant suit seeks review of this court’s order dated 26th January 2023 on grounds that the suit was withdrawn with costs to the Defendants and based on this, the Defendants went on to file a Bill of Costs that was excessive and exorbitant. The applicant urges this court to review the order not to correct any mistake on the face of the decision but to alter the order due to its effect and her discontentment of the same. The above cited decisions have clearly espoused that such dissatisfaction should not be a ground for review but appeal.
13. Moreover, there is a proper forum for determination of Bill of Costs where the Plaintiff can contest. The Plaintiff will have an opportunity to put forward her case and argue out the excessiveness of the Bill of Costs as claimed. And if aggrieved with whatever decision comes out, they still have an opportunity to file a reference. This court therefore is in agreement with the Defendants that the Plaintiff is putting the cart before the horse by seeking these orders.
14. Order 45, rule 3(1) provides that where it appears to the court that there is no sufficient ground for a review, it shall dismiss the application.
15. There being no sufficient ground to warrant the review, the Notice of Motion is devoid of merit and is hereby dismissed with no orders to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 26TH DAY OF OCTOBER 2023.

L. KOMINGOI

JUDGE

IN THE PRESENCE OF:

Ms. Ndugure for Mr. Amadi for the Plaintiff/Applicant.

Mr. Omar for Mr. Oguye for the 1st & 2nd Defendants.

Court Assistant – Mutisya.

