



**Manyasi v Kiragu (Environment and Land Appeal 10 of 2020)  
[2023] KEELC 21099 (KLR) (25 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 21099 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
ENVIRONMENT AND LAND APPEAL 10 OF 2020  
EC CHERONO, J  
OCTOBER 25, 2023**

**BETWEEN**

**APOLLO OMUSALA MANYASI ..... APPELLANT**

**AND**

**GORDON KARIUKI KIRAGU ..... RESPONDENT**

**RULING**

1. Before me is the Notice fo Motion application dated August 4, 2022 seeking the following orders:
  - A. (Spent)
  - B. That pending the hearing and determination of this application, the honourable court be pleased to order stay of taxation of the respondent bill of costs.
  - C. That the Honourable court be pleased to review its judgment delivered on February 16, 2022 regarding order (d) of the judgment ordering the respondent to meet costs of the appeal and it set aside and or vary it to the extent that each party to bear his own costs
  - D. That Costs be in the cause.
2. The application is supported by the affidavit of the applicant sworn on even date and annexures thereto as well as grounds apparent on the face of the application.
3. The said application is opposed by the respondent vide a replying affidavit sworn on May 6, 2022 and filed in court on May 12, 2022.

**Applicants Summary Of Facts**

4. The applicant in his supporting affidavit deposed that this appeal arises from an order by the trial Magistrate Hon JN King'ori CM on July 14, 2021 where, on his own motion, he declined to proceed with the hearing of the former suit stating that the court was bereft of jurisdiction.



5. Based on that order, he preferred the present appeal and on February 16, 2022, this Honourable Court delivered its judgment allowing the appeal but condemned him to pay costs of the appeal to the respondent herein. According to the applicant, he did not in any way contribute to the trial magistrate declining to hear the former suit. He deposed that the decision by the trial magistrate declining to hear the former suit was made suo moto by the trial court and not prompted by him. He stated that the trial court having terminated the proceedings prematurely and after the appeal was heard, this Honourable court reversed the order by the trial Magistrate and remitted the case for fresh hearing. Based on those reasons, the applicant contends that he stands to suffer prejudice unless the said orders are set aside and/or reviewed.

### **Respondent's Summary of Facts**

6. The application is opposed by the respondent vide a replying affidavit sworn on May 6, 2022 and filed in court on May 12, 2022.
7. In his replying affidavit, the respondent stated that cost usually follow the event and that he was awarded costs after his appeal was allowed. He stated that he had asked for costs and this Honourable court, in exercise of its discretionary powers deemed it fit to award him costs. He stated that there are no new issues/matters or apparent error on the face of the record that has been brought to the attention of the court to warrant the review of the order on costs of the appeal herein and therefore this application ought to be dismissed with costs.

### **Legal Analysis And Decision**

8. I have considered the Notice of Motion application dated April 4, 2022, the supporting affidavit sworn on even date and the annexures thereto as well as the replying affidavit sworn on May 6, 2022.
9. Order 45 Rule 1 of the [Civil Procedure Rules](#) provides as follows;  
'1(i) Any person considering himself aggrieved-
  - a. By a decree or order from which an appeal is allowed, but 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.'
10. It is clear from the provisions of the law that a party who is aggrieved by a judgment or order of a court may apply to that court for review of its judgment/order under the following grounds;
  1. Upon discovery of a new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge at the time the decree/order was passed;
  2. On account of some mistake or error apparent on the face of the record; or
  3. For any other sufficient reason.



The applicant has deposed in his supporting affidavit that the trial magistrate HON JN King'ori CM on 14/07/2021 declined to hear the former suit on grounds that he was bereft of jurisdiction. He stated that he did not make any application in which the trial magistrate acted upon in declining to hear the former suit but the court acted on its own motion(Suo moto).

Section 27 of the Civil Procedure Act provides as follows;

'27(1). Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers;

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

I have looked at page 14 of the judgment by this honourable court where the court observed as follows;

'...bearing in mind that fact that none of the parties had questioned his jurisdiction, it became necessary for the trial Magistrate to deliver a ruling with reasons as to why he believed he had no jurisdiction. This was important taking into account the fact that the issue of jurisdiction had been raised by the Court suo moto.'

11. From that extract of the judgment by this honourable court, it is clear that this court appreciated that the parties, and in particular the applicant herein did not move the trial court in declining to hear the former suit
12. Based on the fact that the trial Magistrate acted suo moto in declining to hear the former suit and that none of the parties moved the trial magistrate in taking the directions he did in declining to hear the former suit, It is my considered view that the applicant has given sufficient reasons to warrant this honourable court to exercise of its discretion and review its judgment delivered on February 16, 2022.
13. In view of the matters aforesaid, I find the Notice of Motion application dated April 4, 2022 merited and the same is hereby allowed as prayed.

Orders accordingly.

**DATED, DELIVERED AND SIGNED IN THE OPEN COURT/VIRTUALLY AT BUNGOMA  
THIS 25<sup>TH</sup> DAY OF OCTOBER, 2023**

**HON. E.C CHERONO**

**ELC JUDGE**

**In the presence of;**

1. M/S Change for the Respondent
2. Mr. Nabibia H/B for Onyando fo Appellant/Applicant
3. M/S Joy C/A

