



**Issak v Garissa Maize Millers (Environment & Land Case 18 of 2018)  
[2022] KEELC 12674 (KLR) (30 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 12674 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT GARISSA  
ENVIRONMENT & LAND CASE 18 OF 2018  
EC CHERONO, J  
SEPTEMBER 30, 2022**

**BETWEEN**

**MOHAMED ALI ISSAK ..... PLAINTIFF**

**AND**

**GARISSA MAIZE MILLERS ..... DEFENDANT**

**RULING**

1. This court vide a Ruling dated June 24, 2022 dismissed the plaintiff's application that sought to reinstate the suit herein. In its determination the Court held as follows;  
  
“The applicant in this application did not attend court during the hearing on 25/1/2022. His lawyer was also absent. The hearing date was taken in the presence of one Mr. Odero who was instructed by Abdullahi Bare, advocate for the plaintiff/applicant. The said Abdullahi Bare in his affidavit in support of his application has not given cogent reasons why he did not attend court together with the plaintiff during the hearing on 25/1/2022.  
  
I find this in not a suitable case where this court can exercise its discretion in favour of the applicant as no reasons at all has been given.....”
2. Aggrieved by the above determination the plaintiff has filed application dated June 29, 2022 seeking this court to review, vary and/or set aside its orders dated June 24, 2022 and thereafter proceed to reinstate the plaintiff's case.
3. The application is supported by the affidavit sworn by Mercy Lamwenya, the plaintiff's advocate who averred that the court in dismissing the suit visited the mistake of the advocate upon his client. That the plaintiff's suit had been partly heard. That the plaintiff is desirous of prosecuting the suit to its conclusion.



4. That the plaintiff has a right to be heard, a right guaranteed in *the constitution*. The plaintiff has an arguable case with high chances of success.
5. That the plaintiff has been exposed to unnecessary hardship and legal liability and will continue to suffer irreparable harm if the suit is not reinstated and heard on merit. That the Orders sought herein if granted will not prejudice the rights of the defendants.
6. Despite service being made to the Defendant/Respondent they did not file any response to the application.

### **Analysis and Determination**

7. I have considered the application and the supporting affidavit of the plaintiff/applicant's advocate. The application ostensibly seeks a review of the court's Ruling dated June 24, 2022. Order 45(1) of the *Civil Procedure Rules* sets out the requirements for an application for review as follows:

“ 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 judgment to the court which passed the decree or made the order without unreasonable delay”.

8. The application herein was made five days after the delivery of the Ruling. The application was therefore made without unreasonable delay.
9. In the case of *Nyamogo & Nyamogo v Kogo* [2001] EA 170 the court held as follows:

“ An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of undefinitiveness inherent in its very nature and it must be determined judicially on the facts of each case. There is a real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was possible. Mere error or wrong view is certainly no ground for review though it may be one for appeal”

10. I have considered the application and find no new and important matter that could not be produced by the applicants at the time when the Ruling was made. Indeed, all the issues raised in the present application were same ones raised when the application was canvassed and upon which the court arrived at its ruling.



11. The applicant seeks to place fault on the courts determination which held that both the advocate and his client were at fault, the applicant seeks this court to make a finding that it ought not to have placed the mistakes of counsel upon the client. In its determination this court was steadfast that the cases belong to parties and not the advocates and where the principal considers that the advocate acted contrary to his professional instructions, he/she can sue him for professional negligence. The court cited the court of appeal decision in *Tana & Athi Rivers Development Authority v Jeremiah Kimigbo Mwakio & 3 others* [2015] eKLR where the court held that legal business should be conducted efficiently and we can no longer afford to show the same indulgence towards the negligent conduct of litigation as was perhaps possible in a more leisured age. See also; *Patriotic Guards Ltd v James Kipchirchir Sambu* [2018] eKLR
12. As to whether there is sufficient cause to warrant a review of the court determination, the above analysis clearly shows that the court exercised its discretion judiciously. The same cannot be considered as an apparent error on the face of the record. The case herein has been in court for 12 years. This is the 2<sup>nd</sup> time the application for reinstatement of the suit has been made. The matter has not proceeded substantially since it had been filed. There is therefore no sufficient reason to review the courts determination.
13. The upshot of the above determination is that the application herein lacks merit and the same is hereby dismissed with no order as to costs. Orders accordingly.

**READ, SIGNED AND DELIVERED VIRTUALLY THIS 30TH SEPTEMBER, 2022**

**HON. E.C CHERONO**

**ELC JUDGE**

**In the presence of ;**

- 1. M/S Lamwenga for Applicant**
- 2. Respondent/Advocate-Absent**
- 3. Fardowsa- Court Assistant**

