Mwaura (Suing as the administrator of the Estate of the Late Robert Mwaura Kagondu) v Gachogu & 4 others (Environment & Land Case 372 of 2008) [2022] KEELC 15341 (KLR) (5 December 2022) (Ruling)

Neutral citation: [2022] KEELC 15341 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT & LAND CASE 372 OF 2008

JO MBOYA, J

DECEMBER 5, 2022

BETWEEN

PAUL KAGIWA MWAURA (SUING AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE ROBERT MWAURA KAGONDU) ..... PLAINTIFF

AND

MOTURI GACHOGU ..... 1ST DEFENDANT

DAVID WANYOIKE GACHOGU ..... 2ND DEFENDANT

MUIRURI GACHOGU ..... 3RD DEFENDANT

LAND REGISTRAR,KIAMBU DISTRICT ..... 4TH DEFENDANT

DIRECTOR OF SURVEY ..... 5TH DEFENDANT

RULING

Introduction and Background

1. Vide notice of motion application dated October 18, 2022, the plaintiff/applicant has approached the honourable court seeking the following orders;

    i. That this honourable court be pleased to review and set aside its judgment delivered on July 14, 2022.

    ii. That pending the hearing and determination of this application for review the court do issue a temporary stay of execution of the judgement delivered on the July 14, 2022 pending hearing and determination of the application

    iii. That costs of this application be borne by the respondents.

2. The instant application is premised and anchored on various grounds, which have been highlighted and enumerated at the foot of the application. Besides, the application is supported by the affidavit of the Applicant sworn on even date.

3. Upon being served with the instant application, the 1st, 2nd and 3rd Defendants filed a Replying affidavit sworn on the November 9, 2022 and in respect of which, same has raised inter-alia, the issue that the subject application has been filed by a stranger without the requisite *locus standi*.

4. Suffice it to point out that the subject application came up for hearing on the November 7, 2022, whereupon the advocates for the Parties agreed to canvas and dispose of the application by way of written submissions.

5. Pursuant to and in line with the proposal to canvass the application by way of written submissions, the honourable court proceeded to and gave directions pertaining to and concerning the set timelines for the filing and exchange of written submissions.

Submissions By The Parties:

a.Plaintiff's/Applicant's Submission:

6. Learned counsel for the Plaintiff/Applicant filed written submissions dated the November 14, 2022 and in respect of which same has raised, highlighted and amplified 6 issues for consideration.

7. First and foremost, learned counsel has submitted that though same appears in this matter as an Advocate for the plaintiff/applicant, however same has appeared in the matter in the position of divinity as Moses was when he went to Pharaoh to demand for the release of the Israelites from bondage. In this regard, counsel has quoted and relied on the provisions of Exodus 8 and First Kings 18, to underscore (sic) his role in respect of the subject matter.

8. Additionally, learned counsel for the plaintiff/Applicant has reiterated that the subject application has been endorsed in red pen and that the endorsement of the Application using a red pen symbolized divinity and a divine request from the almighty God for intervention in the matter herein. Clearly, counsel for the Plaintiff/Applicant is intent on invoking the name of God in an endeavor to resolve the subject dispute.

9. Secondly, counsel for the Plaintiff/Applicant has submitted that though the Plaintiff/Applicant tendered and produced before the Honourable court various documentary exhibits, inter-alia, Exhibits 2 and 4, respectively, the honourable court failed to take into account the contents of the said exhibits and therefore disregarded critical and important evidence.

10. Thirdly, counsel has submitted that the Honourable court failed to discern that what was placed before the court was a case of historical injustice, which the Honourable court should have properly appreciated and dealt with, so as to bring the entire matter to a rest once and for all.

11. Fourthly, counsel has added that the Plaintiff/Applicant herein tendered and adduced before the court credible and believable evidence showing that same has enjoyed quiet and peaceful occupation of the disputed portion of land, but the Honourable court declined to consider the said evidence and therefore committed and error in awarding the disputed portion of land to and in favor of the 1st, 2nd and 3rd Defendants.

12. Premised on the foregoing, counsel for the Plaintiff/Applicant has contended that by finding and holding that the disputed portion of land belongs to the Respondents, the honourable court committed a serious error that requires review and setting aside.

13. On the other hand, counsel for the Plaintiff/Applicant has further submitted that by relying on the Report by the 4th Respondent, which indicated that the disputed portion of land belongs to the 1st, 2nd and 3rd Respondents, the honourable court failed to appreciate that the said report did not correspond with the contents of the Green card which had hitherto been produced in evidence and admitted as exhibits.

14. Finally, learned counsel for the Plaintiff/Applicant has submitted that God in heaven dictates that the disputed parcel of land belongs to the Plaintiff as of right and the almighty God of all creation decrees an executive order that the honourable court must review the Judgment delivered on the July 14, 2022.

15. Additionally, learned counsel for the Plaintiff has further submitted that divinity prays for the cooperation of the court to facilitate the correction and rectification of the impugned Judgment and decree, with a view to declaring that the disputed property belongs to the Plaintiff.

16. At any rate, counsel has further contended that God in heaven shall make sure that the plaintiff occupy his rightful land without fear or favor.

17. Be that as it may, it is important to note that learned counsel for the plaintiff/applicant, has neither cited nor quoted any case law to highlight the numerous allegations that are contained in the body of his submissions.

b. 1st, 2nd And 3rd Defendants' Submissions

18. The 1st, 2nd and 3rd Defendants filed written submissions dated the November 17, 2022 and wherein counsel has raised and canvased four pertinent issues for consideration.

19. The first issue that has been raised and amplified by Learned counsel for the 1st, 2nd and 3rd Defendants, relates to the non-compliance with the provisions of order 9 rule 9 of the *Civil Procedure Rules, 2010*.

20. As pertains to the foregoing position, learned counsel has submitted that the Plaintiff/Applicant was hitherto represented by the firm of M/s Etole & Company Advocates, who remained as advocates for the plaintiff/applicant up to and including the delivery of the judgment on the July 14, 2022.

21. Premised on the foregoing, counsel has submitted that it was therefore incumbent upon the current advocates to either procure and obtain the consent of the previous advocates or to seek and obtain leave of the Honourable court before filing a notice of change of advocate.

22. Nevertheless, counsel has added that despite the clear and express provisions of the law, the current advocates for the Plaintiff/Applicant neither obtained any consent nor sought leave of the court, before coming on record.

23. In the circumstances, learned counsel has submitted that the instant application has therefore been filed and mounted by an advocate without the requisite authority and capacity to do so.

24. Secondly, learned counsel for the 1st, 2nd and 3rd Defendants has submitted that the Plaintiff herein has neither alluded to nor disclosed the requisite grounds upon which the review is being sought. In this regard, counsel has contended that the entire application before the court is misconceived and legally untenable.

25. Thirdly, learned counsel for the 1st, 2nd and 3rd Defendants has also submitted that the issues raised in the body of the application and in particular the allegations of serious gaps in the judgment, are issues that can only be dealt with and canvased vide an appeal and not otherwise.

26. Lastly, counsel has submitted that the invocation of and reliance in the name of the Almighty God in respect of the subject matter constitutes and is tantamount to blasphemy.

27. In any event, counsel has submitted that the determination of disputes before courts of law are governed by the *Constitution* and relevant provisions of the law and hence both the Plaintiff/applicant and his learned counsel should stop invoking the name of the Almighty God in vain.

28. Be that as it may, it is important to state and observe that learned counsel for the 1st, 2nd and 3rd respondents has similarly, neither cited nor quoted any case law, to underpin his submissions.

Issues For Determination

29. Having reviewed and analyzed the notice of motion application dated the October 18, 2022, the supporting affidavit thereto and the replying affidavit filed in opposition thereof; and having considered the written submissions filed by and on behalf of the parties, the following issues do arise and are thus worthy of determination:

    i. Whether the Current Application has been filed by a stranger without the requisite mandate/ capacity and whether same contravenes the provisions of Order 9 Rule 9 of the *Civil Procedure Rules, 2010*.

    ii Whether the issues raised at the foot of the current application fall within the purview of review or otherwise.

    iii. Whether the Plaintiff/Applicant has met or satisfied the requisite conditions under the provisions of Order 45 of the *Civil Procedure Rules 2010.*

Analysis And Determination

Issue Number 1 - Whether the current Application has been filed by a stranger without the requisite mandate/capacity and whether same contravenes the provisions of Order 9 Rule 9 of the Civil Procedure Rules, 2010.

30. It is common ground that the Plaintiff/Applicant had hitherto engaged and retained the services of M/s Etole & Company Advocates, to prosecute and handle the subject matter on his behalf.

31. Following the engagement and retention of the said firm of advocate, it is important to note and observe that same acted on behalf of the Plaintiff/Applicant up to and including the delivery of the Judgment of the court. For clarity, the Judgment was delivered on the July 14, 2022.

32. Be that as it may, it appears that after the delivery of the impugned Judgment, the Plaintiff/Applicant was desirous to change advocates and in this regard, same proceeded to and instructed the law firm of M/s Mbichi Mboroki & Kinyua Advocates to take over the conduct of the matter.

33. Pursuant to and upon receipt of the instructions from the Plaintiff/Applicant, it is evident that the current advocates proceeded to and filed a Notice of change of advocates.

34. Subsequently, the current advocates proceeded and filed the Notice of motion application dated the October 18, 2022, seeking *inter-alia*, review of the Judgment and decree of the court.

35. Nevertheless, despite filing a Notice of change, there is no evidence on record that the current advocates for the plaintiff/applicant ever procured and obtained a consent from the previous advocates.

36. In any event, if such a consent was ever procured and obtained (which does not appear to be the case), then same was neither filed with the honourable court, either as required under the law or at all.

37. On the other hand, the current advocates for the plaintiff/applicant were also at liberty to file a suitable application for leave to come on record and thereafter to procure an order of the court, granting such liberty.

38. However, I must similarly point out that no such application was ever filed or lodged with the court. In any event, no court order was procured to facilitate the filing of the notice of change in favor of the current advocates.

39. In view of the foregoing, it is apparent that the current advocates for the plaintiff/applicant neither complied with nor adhered to with the provisions of order 9 Rule 9 of the *Civil Procedure Rules 2010*.

40. Given the significance of the provisions of order 9 rule of the *Civil Procedure Rules 2010*, it is imperative to reproduce same.

41. For convenience, the provisions of order 9 rule of the *Civil Procedure Rules* are reproduced as hereunder;

> Change to be effected by order of court or consent of parties [Order 9, rule 9.]
>
> When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—
>
> (a) upon an application with notice to all the parties; or
>
> (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.

42. To my mind, the provisions of Order 9 Rule 9 were not introduced into the rule book for cosmetic purposes. For clarity, same were meant to cure and avert mischief on the part of Parties, who would want to change advocates after Judgment, albeit without notice to and involvement of previous advocates on record.

43. Additionally, the provisions of order 9 rule 9 of the *Civil procedure Rules* were also meant to avert instances or scenario where incoming advocates high-jack suits/matters which have been concluded merely to take and obtain certain benefits, albeit to the detriment and prejudice of the previous advocates who had labored in the matter.

44. Essentially, the impugned provisions of order 9 rule 9 were introduced into the rule book to avert inter-alia, injustice and prejudice being occasioned to previous advocates, who would be at the mercy of the litigant after delivery or rendition of Judgment.

45. Having underlined the importance of the provisions of Order 9 Rule 9 of the Civil Procedure Rules, it is now important to discern the consequences of non- compliance with the Rules.

46. In my humble view, the provisions of Order 9 Rule 9 of the *Civil Procedure Rules* are couched in peremptory and mandatory terms.

47. Consequently, it behooves all and sundry, the Plaintiff/Applicant not excepted to comply with and adhere with same.

48. To my mind, the Rules of procedure are not only handmaiden of justice, but same are also facilitative and aid the realization of substantive justice. In this regard, I find and hold that the Rules of Procedure in certain circumstances, like the one beforehand, are of primary significance and enable the Honourable court to achieve, inter alia, predictability and certainity.

49. In any event, I beg to add that substantive justice, which is the key pillar and cornerstone of the *Constitution* 2010, would suffer undue harm, if procedural justice was to be thrown out of the window at the mercy and will of litigants and their respective advocates.

50. Be that as it may, it is imperative to underscore that the significance of the Rules of procedure has since been reiterated by various courts, inter-alia, the Court of Appeal in the case of *Kakutia Maimai Hamisi v Peris Pesi Tobiko & others* [2013] eKLR, where the Court of Appeal observed as hereunder;

> " A five judge bench of this court expressed itself very succinctly but a few days ago on this precise point is the case of Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others Civil Appeal No 290 of 2012 as follows;
>
> > "In our view it is a misconception to claim, as it has been in recent times with increased frequency, that compliance with rules of procedure is antithetical to Article 159 of *the Constitution* and the overriding objective principle under Section 1A and 1B of the *Civil Procedure Act* (Cap 21) and Section 3A and 3B of the *Appellate Jurisdiction Act* (Cap 9). Procedure is also a handmaiden of just determination of cases."

51. In view of the foregoing, I come to the conclusion that in the absence of the requisite consent having been filed and in the absence of leave having been procured and obtained, the current advocates who have crafted and lodged the instant application, are not duly on record.

52. In a nutshell, it is my finding and holding that the instant application has been filed, lodged and mounted by an advocates who lacks the requisite locus standi and capacity to file same.

53. Premised on the foregoing, I would be minded to strike out and expunge the notice of motion application dated the October 18, 2022.

Issue Number 2 - Whether the issues raised at the foot of the current Application fall within the purview of Review or otherwise.

54. The Plaintiff/Applicant has raised various albeit numerous allegations at the foot of the current application. Nevertheless, the most conspicuous allegations touch on and concern the contention that the honourable court disregarded the contents of documentary exhibits which were tendered and produced in evidence by the Plaintiff/Applicant.

55. Secondly, the Plaintiff/Applicant has contended that the court erred in failing to find and hold that it is the Plaintiff/Applicant and his siblings who have been in occupation and possession of the disputed portion of the suit property.

56. On the other hand, the Plaintiff/Applicant has also contended that the dispute before the court touched on and concerned a case of historical injustice, but the honourable court failed to address its mind to the salient evidence that were tendered and produced by the Plaintiff/Applicant.

57. Additionally, the honourable court has been accused of adopting and relying on a Report by the Land registrar, Kiambu District showing that the disputed portion of land belonged to the 1st, 2nd and 3rd Defendants, yet the said Report is at variance with Exhibits 2 and 3 produced by the Plaintiff.

58. Lastly, it has been contended that God in heaven commands and decrees that the disputed portion of land belongs to the Plaintiff/Applicant, but this honourable court has (sic) chosen to defy God and award disputed portion of land to the 1st, 2nd and 3rd Defendants.

59. Premised on the foregoing, the Plaintiff/Applicant has therefore invited the Honourable court to review the impugned Judgment and to accord with the command and executive orders of God in heaven.

60. I must say, that Almighty God in heaven is the God of all creation and is the protector of all and sundry. See the acknowledgment of the Supremacy of God in the preamble of the *Constitution, 2010*. In this regard, it is blasphemous on the part of the Plaintiff/Applicant and his counsel to equate themselves with the Almighty God in heaven.

61. Additionally, it is common knowledge that God in heave frowns upon and deprecates those who invoke and rely on his name in vain. Consequently, it therefore behooves the Plaintiff/Applicant and his learned counsel to stop blasphemy.

62. Notwithstanding the foregoing, it is important to note and underscore that an application for review cannot be granted on the basis of purported decrees and orders of Almighty God from heaven, in the manner purported and alluded to in the blasphemous submissions mounted by counsel for the Plaintiff/Applicant.

63. Be that as it may, I beg to point out that where the issues that are alluded to in the body of the application for review relates to and concern issues that were actively canvased and agitated before the court and for which the court made deliberate findings, then such issues cannot found an application for review.

64. On the other hand, the fact that the impugned Judge was wrong in the analysis of the evidence placed before him/her or formed an erroneous perception on an issue of law, can also not ground an application for review.

65. To this end, it is appropriate to take cognizance of the holding in the case of *National Bank of Kenya Limited v Ndungu Njau* [1997] eKLR where the Court Of Appeal stated as hereunder;

> " 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.
>
> It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review."

66. Additionally, it is also worthy to reiterate the holding of the Court of Appeal in the case of *Nyamogo & Nyamogo Advocates v Kogo* [2001] 1 EA 173., where the court stated as hereunder;

> " An error apparent on the face of the record includes an omission which must also be glaring and self evident. It is not one that requires an elaborate argument or serious scrutiny of the

record to be established-- National Bank of Kenya Ltd v Ndungu Njau, civil Appeal No. 211 of 1996 (unreported).

As was stated by the Nigerian Court of Appeal in the case of Peter Cheshe & Another v Nicon Hotels Ltd. & Another, Appeal No. CA/A/83/M/98 that an error on the face of the record is one that can be corrected under the slip rule whose jurisdiction is limited to correcting errors, mistakes or omissions in the ruling or judgment and does not permit granting orders not made or extending the scope of."

67. Nourished and duly guided by the principles enunciated vide the decisions quoted in the preceding paragraphs, I find and hold that the issues raised at the foot of the current application are meant to invite this Honourable court to sit on appeal on own Judgment and decision.

68. In my humble view, such an invitation would be tantamount to inviting anarchy into the hallowed corridor of justice, which is contrary to the Rule of law and to the General administration of Justice.

69. In a nutshell, I find and hold that the issues alluded to at the foot of the current application, including the purported Executive orders (sic) from Almighty God can only be canvased elsewhere and not before this honourable court.

Issue Number 3 - Whether the Plaintiff/Applicant has met or satisfied the requisite conditions under the provisions of Order 45 of the Civil Procedure Rules 2010.

70. What the plaintiff/applicant has placed and laid before the honourable court is an application for review of the Judgment and decree of the honourable court.

71. To the extent that the plaintiff/applicant is seeking for an order of review, then it behooves the plaintiff/applicant to endeavor to and comply with the provisions of section 80 of the *Civil Procedure Act*, Chapter 21, Laws of Kenya, as read together with order 45 of the *Civil Procedure Rules 2010*.

72. For convenience, the mandatory provisions of order 45 rule 1 of the *Civil Procedure Rules* stipulates and provides as hereunder;

Application for review of decree or order [Order 45, rule 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.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.

73. My understanding of the foregoing provisions is that any Party or Litigant, who is keen to pursue an order of review, is obliged and obligated to delineate the specific ground(s) upon which the application for review is sought.

74. For coherence, it is appropriate to underline and underscore that a Party is not restricted to any one of the grounds. In this regard, a Party can very well implead and rely on all the grounds stipulated and captured under the provisions of Order 45 Rule 1 of the *Civil Procedure Rules, 2010*.

75. Nevertheless, the critical point to observe is that the applicant/claimant, seeking an order of review must implead, identify and highlight the ground(s) upon which same relies on and desires to canvass before the honourable court.

76. Suffice it to point out that where the applicant does not delineate, implead or expressly state the ground(s) upon which review is being sought, then such a Party cannot be allowed to make submissions on grounds that were neither captured nor contained in the body of the application.

77. Respectfully, the decision in the case of *Stephen Gathua Kimani v Nancy Wanjira Waruingi t/a Providence Auctioneers* [2016] eKLR, is apt and succinct.

78. For coherence, the honourable court stated and observed as hereunder;

> I am alive to the fact that the discretion donated to the court under Section 80 of the *Civil Procedure Act* is unfettered, but for the discretion to be exercise in favour of the applicant, the application for review must be based on the grounds specified under Oder 45 or on any sufficient reason but in either case the application must be made within a reasonable time.

79. As pertains to the subject application, I must repeat and reiterate that the plaintiff/applicant did not allude to or disclose any ground(s) for review, either in the body of the application or in the supporting affidavit.

80. Having not impleaded or delineated the ground(s) upon which review was being sought, it is my humble view that the application for review by and at the instance of the Plaintiff/Applicant was not only incompetent, but stillborn.

81. Notwithstanding the foregoing, it is also important to note that even where the known grounds for review have been impleaded and delineated in the body of the application, the applicant would still be obliged to prove, establish and demonstrate the impleaded grounds to the satisfaction of the honourable court.

82. Put differently, it would not be enough for a litigant for just mention the grounds for review and throw the same on the face of the Honourable court and demand a positive order of review.

83. Clearly, such an endeavor would be contrary to the established and hackneyed position of the law, which underscores that the Applicant is duty bound to place sufficient and credible material before the Honourable court, to warrant the exercise of discretion for review.

84. Unfortunately, in respect of the subject matter, the plaintiff/applicant has neither impleaded the requisite grounds for review nor has same even endeavored to place before the Honourable court any scintilla of evidence to warrant the grant of the orders sought.

85. Suffice it to point out that the invocation of the name of the Almighty God, albeit in a blasphemous manner, cannot warrant the grant of the orders of review, either in the manner sought or at all.

86. I must have said enough to vindicate the position that the application for review is premature, misconceived and mischievous. However, the foregoing observations would not be complete without the citation of the decision in the case of *Republic v Advocates Disciplinary Tribunal Ex-parte Apollo Mboya* [2019] eKLR, where the Honourable court stated as hereunder;

> 29. I am not persuaded that the reasons offered by the applicant amounts to 'sufficient reason' within the meaning of the rules cited above nor is it analogous or ejusdem generis to the other reasons stipulated in Order 45 Rule 1. My finding is fortified by the holding in the case of Evan Bwire vs Andrew Nginda[20]where the court held that 'an application for review will only be allowed on very strong grounds particularly if its effect will amount to re-opening the application or case a fresh.
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> 30. The principles which can be culled out from the above noted authorities are:-
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> i. A court can review its decision on either of the grounds enumerated in Order 45 Rule 1 and not otherwise.
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> ii. The expression "any other sufficient reason" appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds.
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> iii. An error which is not self-evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of record justifying exercise of power under Section 80.
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> iv. An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
>
> v. A decision/order cannot be reviewed under Section 80 on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.
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> vi. While considering an application for review, the court must confine its adjudication with reference to material, which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.
>
> vii. Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.
>
> viii. A mistake or an error apparent on the face of the record means a mistake or an error, which is prima-facie visible and does not require any detail examination. In the present case the petitioner has not been able to point out any error apparent on the face of the record.
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> ix. Section 80 of the Civil Procedure Code provides for a substantive power of review by a civil court and consequently by the appellate courts. The words occurring in Section 80 mean subject to such conditions and limitations as may be prescribed thereof and for the said purpose, the procedural conditions contained in Order 45 Rule 1 must be taken into consideration. Section 80 of the Civil Procedure Code does not prescribe any limitation on the power of the court, but such limitations have been provided for in Order 45 Rule 1.

x. The power of a civil court to review its judgment/decision is traceable in Section 80 *CPA*. The grounds on which review can be sought are enumerated in Order 45 Rule 1.

31. Guided by the jurisprudence discussed above, it is my finding that the reasons cited by the applicant do not quality to be any of the grounds prescribed in Order 45 Rule 1 of the *Civil Procedure Rules*.

87. In a nutshell and even if, the subject application was to be determined on the basis of merits, I would still have come to the conclusion that same is devoid and bereft of merits.

Final Disposition:

88. Having evaluated and analyzed the various issues that were highlighted in the body of the Ruling and having taken cognizance of (sic) the blasphemous threats propagated vide the submissions by the plaintiff/ applicant, I am still of the humble view that the instant application is not only misconceived, mischievous but is bad in law and legally untenable.

89. Be that as it may, it is appropriate to draw the attention of the plaintiff/applicant and his learned counsel, who has purported to be the Moses of the bible and who was sent to rescue the Israelites from bondage, that indeed the Israelites were long liberated and same are not desirous of any Further Liberation in the manner alluded in the written submissions of the plaintiff.

90. In any event, if the Israelites still require liberation and the intervention of the biblical Moses, then such Liberation cannot be pursued before this honourable court.

91. Notwithstanding the foregoing, I find and hold that the Application dated the October 18, 2022 is not meritorious. For coherence, same is bereft of merits.

92. Consequently and in the premises, the instant application be and is hereby dismissed with costs to the 1st, 2nd and 3rd respondents.

93. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5TH DAY OF DECEMBER, 2022.

OGUTTU MBOYA

JUDGE

In the Presence of;

Benson - Court Assistant.

Mr Gilbert Kinyua for the Plaintiff/Applicant.

Mr Njiru Mbogo for the 1st, 2nd and 3rd Defendants/Respondent.

N/A for the 4thand 5th Defendants/Respondents.