



**GC Residential Limited v Directline Assurance Company Limited & another;  
Kenya Revenue Authority (Interested Party) (Environment & Land Case  
E134 of 2022) [2024] KEELC 6700 (KLR) (17 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6700 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E134 OF 2022  
MD MWANGI, J  
SEPTEMBER 17, 2024**

**BETWEEN**

**GC RESIDENTIAL LIMITED ..... PLAINTIFF**

**AND**

**DIRECTLINE ASSURANCE COMPANY LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**DIRECTLINE INVESTMENTS LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**KENYA REVENUE AUTHORITY ..... INTERESTED PARTY**

**RULING**

(In respect of the Plaintiff’s Notice of Motion dated 17<sup>th</sup> July, 2024 brought under the provisions of Article 50(1), 159(2) (d) of the Constitution of Kenya 2010, Sections 1A, 1B, 3A and (a) of 80(a) of the Civil Procedure Act, Order 45 rules 1(1), (a), 3(2) and 5, Order 5, rules 1 and 15 of the Civil Procedure Rules 2010, Sections and 19 of the ELC Act and all other enabling provisions of the Law).

**Background**

1. On 23<sup>rd</sup> May, 2024, this court on its own motion came across proceeding in the court file purportedly recorded on 20<sup>th</sup> September, 2023 by my brother Judge Edward Wabwoto who had previously had the conduct of this matter. On the said date, the Judge supposedly dismissed the Plaintiff’s case and the 1<sup>st</sup> Defendant’s counter-claim for non-attendance. None of the parties was present on the said date.
2. At the time of the discovery of the said proceedings of 20<sup>th</sup> September, 2023, this court had already heard and determined an application dated 26<sup>th</sup> January, 2024 seeking to strike out and expunge from the court record pleadings purportedly filed on behalf of the 1<sup>st</sup> Defendant by the law firm of Orange



- & Associates having been filed without the authority of the 1<sup>st</sup> Defendants Board of Directors or its Shareholders. The court delivered its ruling to that application on 14<sup>th</sup> May, 2024 unaware of the proceedings of 20<sup>th</sup> September, 2023. None of the parties in this matter was aware of those proceedings.
3. The court on 23<sup>rd</sup> May, 2024 noted that since there was no Order vacating or setting aside the supposed Orders of 20<sup>th</sup> September, 2023, this matter stood dismissed with the consequence that all subsequent proceedings after the proceedings of 20<sup>th</sup> September, 2023 were inconsequential until and unless a contrary decision was made varying or discharging the said Orders which were on the record of the court anyway. The court directed the Deputy Registrar of this court to issue a mention notice to the parties to appear before me upon my resumption of duty from leave for directions.
  4. When parties appeared before me on 9<sup>th</sup> July, 2024, I informed them about my discovery and informed them that they were at liberty to move the court appropriately.
  5. This explains the Plaintiff's application now before the court. The Plaintiff prays for review and setting aside of the ex parte orders made on 20<sup>th</sup> September 2023, dismissing its suit and the 1<sup>st</sup> Defendant's counter-claim dated 14<sup>th</sup> June, 2022. Further, the Plaintiff prays that the court expunges from its record, the proceedings of 20<sup>th</sup> September, 2023 having been recorded in error. The Plaintiff further prays for an order declaring all subsequent proceedings, directions, rulings and orders issued by the court in this matter after the 20<sup>th</sup> September, 2023, as valid and regular and reflecting the true and accurate record of the proceedings in this suit.
  6. The Plaintiff's application is premised on the grounds on the face of it and the supporting affidavit of Victor Muthuri Nkonge. The Plaintiff asserts that it was unaware of the date of 20<sup>th</sup> September, 2023. The date issued by the court and that that was entered on the Judiciary CTS was 25<sup>th</sup> September, 2023. All the parties indeed appeared before the trial court on 25<sup>th</sup> September, 2023 for hearing but the case was adjourned on the application by the Advocate for the 1<sup>st</sup> and 2<sup>nd</sup> Defendant on account of the unavailability of the Defendant's witness. At no point was the case dismissed as far as the Plaintiff was concerned.

### **Courts Direction**

7. Neither the Defendants nor the Interested Party filed a response to the Plaintiff's application in spite of having been served with the same. The Defendants' through their Advocate confirmed that they were in support of the application. The Plaintiff/Applicant on its part relies on the grounds on the face of the application and in the supporting affidavit.

### **Issues for Determination**

8. The sole issue for determination is whether the Plaintiff/Applicant has made a case for review and setting aside of the orders of 20<sup>th</sup> September, 2023 and the expunging of the proceedings therein from the record of the court as prayed for in its application.

### **Analysis and Determination**

9. Undoubtedly, a court of law has the mandate to review its decision or order on the grounds set out under Order 45 rule 1 of the Civil Procedure Rules. Whereas Section 80 of the [Civil Procedure Act](#) sets out the law on review; Order 45 of the [Civil Procedure Rules](#) spells out the rules.



10. In the case of *Republic v Public Procurement Administrative Review Board & 2 others* [2018] eKLR, the court rightly held as follows:-

“Section 80 (of the CPA) gives the power of review and order 45 sets out the rules. The rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review limiting it 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 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.”

11. The principal ground upon which the Plaintiff in this case bases its application on is the existence of an error apparent on the face of the court record. The Plaintiff asserts that the proceedings of 20<sup>th</sup> September, 2023 were erroneous since the case was actually scheduled for hearing on 25<sup>th</sup> September, 2023 and not 20<sup>th</sup> September, 2023.
12. An application for review should ideally be handled by the Judge who issued the order sought to be reviewed and set aside. However, my brother judge, Justice Wabwoto has since been transferred from Nairobi. The file was allocated to this court after his transfer.
13. I will therefore base my decision from my reading of the court record.
14. It is interesting that on 25<sup>th</sup> September, 2023, the court proceeded to hear the parties’ Advocates without reference to the Order of 20<sup>th</sup> September, 2023. All the parties were represented on 25<sup>th</sup> September, 2023. The court went ahead to grant leave to the Defendant to substitute their witness’ statement on an application by the Advocate for the Defendants and further rescheduled the hearing of the matter on 31.1.2024. At no point did either the court or the parties refer to the proceedings of 20<sup>th</sup> September 2023.
15. On 31.1.2024, the court once again presided over the matter and gave directions on the issue of representation of the Defendants after it was notified of the filing of the application dated 26<sup>th</sup> January, 2024 which I mentioned earlier in this ruling.
16. The Judiciary CTS confirms the Plaintiff’s assertion that the hearing of this matter was scheduled for 25<sup>th</sup> September, 2023 before my brother Judge E. K. Wabwoto. There is no entry for 20<sup>th</sup> September, 2023. No wonder none of the parties appeared before the court on the said date. All the parties appeared in court on 25<sup>th</sup> September, 2024.
17. This is sufficient evidence that the proceedings of 20<sup>th</sup> September, 2023 were erroneous. There is an error apparent on the face of the record of the court. The conduct of the court on 25<sup>th</sup> September, 2023 and subsequently thereafter demonstrates the mind of the court to the effect that the case was still alive.
18. Consequently, I find that the Plaintiff/Applicant has made a case for review and setting aside of the Orders issued in error on 20<sup>th</sup> September, 2023. The said Orders are hereby set aside. The proceedings of 20<sup>th</sup> September, 2023 are expunged from the record of the court having been recorded in error.



19. It follows therefore that all the subsequent proceedings, directions, rulings and orders issued in this matter after 20<sup>th</sup> September, 2023 are valid and regular and reflect the true and accurate record of the proceedings of this court.

20. The costs of this application shall be in the cause.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Nkonge for the Plaintiff/Applicant

Mr. Mageto h/b for the Defendants

Mr. Muhoro for the Interested Party

Court Assistant: Yvette

**M.D. MWANGI**

**JUDGE**

