



REPUBLIC OF KENYA



**Be Energy Limited v Godfrey Mugambi Kimathi t/a Kyms Liquor Store (Environment and Land Appeal 3 of 2024) [2024] KEELC 6509 (KLR) (7 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6509 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL 3 OF 2024**

**MD MWANGI, J**

**OCTOBER 7, 2024**

**BETWEEN**

**BE ENERGY LIMITED ..... APPELLANT**

**AND**

**GODFREY MUGAMBI KIMATHI T/A KYMS LIQUOR STORE . RESPONDENT**

*((In respect of the application by the Appellant/Applicant dated 23rd May, 2024 seeking a review of this court's ruling delivered on 9th May, 2024))*

**RULING**

**Background.**

1. The Appellant's application is brought under the provisions of Section 1A, 3A and 80 of the [Civil Procedure Act](#) and Order 45 rule 1 of the [Civil Procedure Rules](#). It seeks for an order of review of the court's ruling delivered on 9<sup>th</sup> May, 2024. It is on the basis that the court erroneously held that the decision appealed from had originated from a 'Complaint' rather than a "Reference" before the Business Premises Rent Tribunal and that the Appellant would therefore have required leave of the court.
2. The Appellant/Applicant asserts that, from the record of appeal filed, it is evident that the decision appealed from had been brought before the Business Premises Rent Tribunal by way of a Reference. The alleged 'Reference' has been attached as an annexure 'AA-2' in the supporting affidavit of Ali Abdelghany sworn on 23<sup>rd</sup> May, 2024.
3. The Respondent vide his replying affidavit sworn on 10<sup>th</sup> June, 2024 insists that the decision appealed from did not emanate from a reference under Section 6 of Cap 301. The Respondent states that what he had lodged was a complaint before the Business Premises Rent Tribunal by way of Form C – meaning it was a complaint under Section 12(4) of Cap 301 and that a look at the form indicates that it is a complaint relating to termination of a controlled tenancy.



4. I note that the Applicant without leave of the court filed a supplementary affidavit sworn on 23<sup>rd</sup> May, 2024. I will ignore it since no leave was sought for its admission on record either.

### **Court's Directions.**

5. The court's directions were that the application be canvassed by way of written submissions. Both parties complied. I have had the occasion to read through the submissions by the parties.

### **Issues for Determination**

6. The sole issue for determination in this matter is whether the application meets the threshold for review.

### **Determination**

7. Under the law, there is a clear distinction between grounds of appeal and grounds for review. In the case of *National Bank of Kenya Ltd v Ndungu Njau* (1977) eKLR, that has been cited by the Applicant, the Court of Appeal spelt out the distinctions. It held that;

“...an order cannot be reviewed because it is shown that the Judge decided the matter on a foundation of incorrect procedure and or that his decision revealed a misapprehension of the law, or that he exercised his discretion wrongly in the case. Much less could it be reviewed on the ground that the other judges of coordinate jurisdiction and even the Judge whose order is sought to be reviewed have subsequently arrived at different decisions on the same issue.... the proper way to correct a Judge's alleged misapprehension of the procedure or the substantive law or his alleged wrongful exercise of discretion is to appeal the decision unless the error be apparent on the face of the record and therefore requires elaborate argument to expose.

.....the error or omission must be self-evidence and should not require an elaborate argument to be established.”

8. The Applicant's application is premised on the ground of an error apparent on the face of record. The Applicant points the court to the record of appeal and invites the court to consider the form used in filing the matter before the Business Premises Rent Tribunal.

9. It is noteworthy that the record of appeal had been filed even at the time this court made its ruling of 9<sup>th</sup> May, 2024.

10. At paragraph 8 of the ruling, the court duly noted that the complaint was expressed to have been brought under Section 12(4) of the *Act*. It went on to consider the import of a matter lodged under section 12(4) of the Act. The court in arriving at its decision relied on the case of *Gilas Yimbo t/a Woodvale Associates v Eldomart Holdings Ltd* (2008) eKLR, where Visram, J (as he then was) had stated that,

“On my part, I will stick to the conventional wisdom and hold that if the legislature had intended a right of appeal from decisions of the tribunal in respect to complaints made under Section 12(4) of the Act, it would have said so clearly and would not have amended the Act, as it did in 1970,”

11. The court had therefore duly considered the section of the law under which the complaint had been brought under.



12. I find the holding by the Supreme Court of India in the case of *Ajit Kumar Rath v Estate of Orish & 2 others*, 9 Supreme Court cases 596 at 608, relevant in this matter. The court expressed itself on review in the following words;

“The power (of review) can be exercised on the application of a person on 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 order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for (establishing) it.”  
(Emphasis mine).

13. The upshot is that the Applicant’s application lacks merit. It is hereby dismissed with costs to the Respondent.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 7<sup>TH</sup> DAY OF OCTOBER 2024.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Ms. Oketch for the Respondent

Ms. Omwenga for Applicant (h/b for Mr. Mbanda)

Yvette: Court Assistant.

**M.D. MWANGI**

**JUDGE**

