



Odera Obar & Co. Advocates v Oudia (Environment and Land Miscellaneous Application 163 of 2017) [2022] KEELC 3762 (KLR) (5 May 2022) (Ruling)

Neutral citation: [2022] KEELC 3762 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 163 OF 2017
LC KOMINGOI, J
MAY 5, 2022
IN THE MATTER OF: THE ADVOCATES ACT CAP 16 LAWS OF KENYA
IN THE MATTER OF: TAXATION OF COSTS
BETWEEN THE CLIENT AND THE ADVOCATE

BETWEEN

ODERA OBAR & CO. ADVOCATES APPLICANT

AND

JAMES OUDIA RESPONDENT

RULING

1. This is the Notice of Motion dated September 30, 2021 brought under order 45 rule 1 and 2(2) and order 51 rule 1 of the *Civil Procedure Rules* and section 1A and 1B of the *Civil Procedure Act* and all other enabling provisions of the law.
2. It seeks orders:-
 1. Spent.
 2. Spent.
 3. Spent.
 4. Spent.
 5. That there be stay of execution pending the respondent's reference dated November 28, 2018.
 6. That this honourable court be pleased to review the judgment entered on 20th March 2019 on the basis that there is an error apparent on the record in that the judgment at paragraphs 8 and 15 indicate a reference was yet to be filed.



7. That the costs of this application be provided for.
3. The grounds are on the face of the application and are set out in paragraphs (a) to (j).
4. The application is supported by the affidavit of James Oudia, the Respondent sworn on the 30th September 2021.
5. The application is opposed. There is a replying affidavit sworn by Migiro Kerubo Maria Advocate for the applicant. there are also grounds of opposition filed by the applicant/Advocate.
6. On the November 22, 2021 the court with the consent of the parties directed the notice of motion be canvassed by way of written submissions.
7. I have considered the notice of motion and the affidavit in support. I have also considered the grounds of opposition, the replying affidavit, the written submission and the authorities cited. The issue for determination is whether this application is merited.
8. Order 45 rule 1, 2 of the [Civil Procedure Rules](#) provides that:-

“(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.”

9. The ruling sought to be reviewed is dated March 26, 2019. This application has been brought after unreasonable delay. There is no explanation. I rely on the case of [Stephen Gathua Kimani v Nancy Wanjira](#) Civil Appeal no 142 of 2012.
10. I also find that the respondent has failed to demonstrate that there is an error apparent on the record with respect of the ruling dated March 26, 2019. In the case of [National Bank of Kenya v Ndungu Njau](#) Civil Appeal No 211 of 1996 the Court of Appeal held as follows:-

“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 of other provision of law cannot be a ground for review”.

11. In conclusion, I find no merit in this application and the same is dismissed with costs to the Advocate/Applicant

It is so ordered.

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

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L. KOMINGOI

JUDGE

In the presence of:-

Mr. Odera for the Advocate

Mr. Ndungu for the Respondent

Steve - Court Assistant

