



REPUBLIC OF KENYA



**Karanja v Karanja (Civil Appeal E213 of 2023)
[2025] KEHC 6083 (KLR) (10 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 6083 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E213 OF 2023
DO CHEPKWONY, J
APRIL 10, 2025**

BETWEEN

CHARLES MWAURA KARANJA APPELLANT

AND

LUCIA WANJIRU KARANJA RESPONDENT

RULING

1. This ruling determines the Respondent's Notice of Motion application dated 10th December, 2024 which seeks the following orders:
 - a. Spent.
 - b. That the Honourable court be pleased to review the Ruling and Order by the Honourable Lady Justice D. O. Chepkwony delivered on 15th July, 2024.
 - c. That the Honourable court be pleased to award the costs of the Appeal to the Respondents/Applicants.
 - d. That costs of the application be provided for.
2. The Application is based on the grounds as set out on its face and the Supporting Affidavit of the Applicant's advocate, D. M. Mirara sworn on 10th December, 2024. The Applicant argues that the court's ruling delivered on 15th July, 2024 dismissed the instant appeal for want of prosecution but directed that the Respondent pay the Appellant costs of the appeal. The Respondent/Applicant avers that this was a mistake because the costs should follow the event because in this case, the Appellant having lost in the appeal should also shoulder the costs. Consequently, this was an error on the face of the ruling hence the court should rectify the same and in the interest of justice, award him costs.



Analysis and Determination

3. I have read through the affidavit in support of the application dated 10th December, 2024 and the ruling delivered by this Court on 15th July, 2024. To determine the concern raised therein, this Court is guided by the provisions of Section 80 of the *Civil Procedure Act* which grants it the discretionary power to review its orders or decree, regardless of whether or not they are appellate or not.
4. The said Section 80 states:-
[80]Review
Any person who considers himself aggrieved—
 - a. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
 - b. by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.
5. By this power, the court can review a matter and make any orders it considered appropriate including setting aside or amending the original order or decree.
6. This Court wishes to emphasise that the grounds for review are outlined under Order 45 of the Civil Procedure Rules, 2010, and they include:-
 - (a) There must be discovery of a new and important matter which after the exercise of due diligence, was not within the knowledge of the applicant at the time the decree was passed or the order was made; or
 - (b) There was a mistake or error apparent on the face of the record; or
 - (c) There were other sufficient reasons; and
 - (d) The application must have been made without undue delay.
7. Therefore, a party who discovers new evidence or an error apparent on the face of the ruling or judgment on record, after the same has been issued, may apply for a review based on Section 80 of the *Civil Procedure Act*.
8. In this case, the Applicant has relied on the second ground of the said provision that there is an error apparent on the face of the record. The court has read through its Ruling and notes that indeed there is an error apparent on the face of the ruling. This Court thus agrees with the Applicant's submissions that in line with the provisions of Order 27 of the Civil Procedure Code, costs should follow the event and finds that there was no justification in condemning the Respondent to pay costs to the unsuccessful party, being the Appellant. Therefore, since the appeal was dismissed for want of prosecution, the same having filed by the Appellant and he ought to have been on the forefront of moving the court for its prosecution, it was an error to have ordered the Respondent to bear the costs thereof. The Appellant is the party to be condemned to pay the costs of the Appeal and hence the ruling an order issued by this Court on 15th July, 2024 is hereby reviewed in the said terms:-
 - a. That the Ruling and Order issued by the Honourable Lady Justice D. O. Chepkwony delivered on 15th July, 2024 is partially reviewed to the extent that the Appellant should pay the costs of the Appeal to the Respondent.



b. The Appellant shall also pay the Respondent the costs of the application.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 10TH DAY OF APRIL , 2025.

D. O. CHEPKWONY

JUDGE

In the presence of:

Court Assistant – Martin

No appearance for and by either party

