



**Gichuru v Independent Electoral & Boundaries Commission & 2 others  
(Petition E015 of 2022) [2025] KEHC 6912 (KLR) (20 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6912 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
PETITION E015 OF 2022  
HM NYAGA, J  
MAY 20, 2025**

**BETWEEN**

**MWENDA JOHNSTONE GICHURU ..... PETITIONER**

**AND**

**INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION .... 1<sup>ST</sup>  
RESPONDENT**

**CLERK MERU COUNTY ASSEMBLY ..... 2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. By an application dated 5<sup>th</sup> November, 2024, and it seeks the following orders:-
  - a. Spent
  - b. Spent
  - c. Spent
  - d. That the honourable court be pleased to review and/or set aside the orders of costs as against the applicant herein.
  - e. That the costs of this application be in the cause.
2. The application is supported by the grounds set out on the face of it and the affidavit sworn by the applicant on even date.
3. The applicant's case he filed the Petition herein as a public interest litigation which was subsequently dismissed with costs. The applicant avers that, having come to court in a Petition touching on public interest being condemned to pay costs was punitive and infringed on parties' right to the rule of natural



- justice. That the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents have instructed the 4<sup>th</sup> respondent, who is in the process of executing the ruling in question.
4. It is further averred that the respondent have not followed the procedure in the execution and unless the same is stopped, he is bound to suffer irreparable loss and damage.
  5. The 1<sup>st</sup> respondent filed a replying affidavit sworn on 20<sup>th</sup> November, 2024, by one Chrispine Owiye, the Director of Legal Services.
  6. He depones that upon determination of he Petition the 1<sup>st</sup> respondent filed its bill of costs, which was duly served on the applicant. That the applicant filed her objection and a ruling was delivered on 19<sup>th</sup> July 2024, taxing the bill at Ksh. 241,400/=. That therefore, the claims that there was a breach of the rules of natural justice are baseless.
  7. It is further averred that the applicant has not met the threshold for review as set out under Order 45 rule 1 of the [Civil Procedure Rules](#). That if the applicant is aggrieved by the orders in question, then he ought to appeal to the Court of Appeal.
  8. It is further averred that the application has been made after an undue delay of twenty (20) months from the time the decision in question was made.
  9. It is also averred that the award of costs is discretionary. That even in as much as public litigation is useful in advancing rights and addressing societal problems, the applicant did not demonstrate to the court that he was acting on the public's behalf. That the applicant has not demonstrated what procedural impropriety the 1<sup>st</sup> Respondent has committed executing for the costs that were included in defending the Petition.
  10. The application was canvassed by way of written submissions. For the applicant, it is submitted that the question that the court has to answer is whether the order on costs in a public interest litigation was justified. He argues that the Petition was brought in good faith and the matter touched on public interest. Therefore, it is argued, the court erred in awarding costs to the respondents. To buttress this point, the applicant cited the case of [John Harun Mwau and Others v The Attorney General & Others](#) (2012)eKLR.
  11. The respondent on his part argued that the Petitioner/applicant did not file the Petition in the interest of the public, but for his own personal interest. To buttress what a public interest litigation is all about, the 1<sup>st</sup> respondent cited the following cases:-
    - a. [Ashok Kumar Randeu v State of West Bengal](#), Petition No. 199 of 2003.
    - b. [Ndoyo Kayuga & Another v Mike Mbuvi Gideon Sonko & Others](#) Petitions No. E017 of 2022.
  12. It is further submitted that the applicant has failed to bring himself under ambit of Order 45 Rule 1 of the [Civil Procedure Rules](#), which principles were reiterated in [Parliamentary Service Commission v Martin Nyaga Wambora & Others](#) SC. Application No. 8 of 2017 (2018) eKLR and [Republic v Advocate Disciplinary Tribunal, Ex-parte Apollo Mboya](#) (2019)eKLR.
  13. The respondent further submitted that the applicant is guilty of laches, having taken twenty months to make the application.
  14. The 1<sup>st</sup> respondent thus urged the court to dismiss the application with costs.
  15. It is not in dispute that this petition was dismissed and the Petitioner/Applicant was condemned to pay the costs. The applicant has now come with an application for review.



16. Applications for review are governed by Section 80 of the *Civil Procedure Act* which provides as follows:

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.

17. Order 45A Rule 1 of the *Civil Procedure Rules* provides for the grounds upon which a party may approach the court for review. It provides as follows:-

Order 45 - Review

1. 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.

18. In the present application the applicant has not set out any of the grounds herein above. His argument as that the court erred in awarding costs to the 1<sup>st</sup> respondent, whereas this was a public interest litigation matter.

19. With all the respect to the applicant, an alleged error in the interpretation of the law of not a ground for review. As submitted by the respondent, this in the preserve of the Court of Appeal, on appeal.

20. It must be remembered that costs are the discretion of the court and under Section 27 of the *Civil Procedure Act*, they follow the event unless for good reasons the court finds otherwise.

21. Therefore, the discretion of the court to award the respondents costs cannot be questioned by a court of concurrent jurisdiction.

22. It is further argued that the execution process was improper.



23. I have considered this argument. It is on record that the Bill of Costs was duly taxed and a certificate of Costs was issued on 1<sup>st</sup> October, 2024. Subsequently, warrants of attachment and sale were issued for the taxed costs.
24. I have perused the court file and I see no impropriety in the manner that the execution process was commenced.
25. Having, considered the matter, I find that the application is lacking merit and it is dismissed, with costs to the 1<sup>st</sup> respondent.

**DATED, SIGNED & DELIVERED AT MERU THIS 20<sup>TH</sup> DAY OF MAY, 2025.**

**H.M. NYAGA**

**JUDGE**

