



Group Nine Security Limited & 2 others v Ministry of Interior and National Administration & 2 others (Petition E002 of 2024) [2024] KEHC 10919 (KLR) (20 September 2024) (Ruling)

Neutral citation: [2024] KEHC 10919 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PETITION E002 OF 2024
RN NYAKUNDI, J
SEPTEMBER 20, 2024**

BETWEEN

**GROUP NINE SECURITY LIMITED 1ST PETITIONER
REAL APPRAISAL LIMITED 2ND PETITIONER
VENUS GROUP OF HOTELS 3RD PETITIONER**

AND

**MINISTRY OF INTERIOR AND NATIONAL ADMINISTRATION 1ST
RESPONDENT
THE ATTORNEY GENERAL 2ND RESPONDENT
DIRECTOR GENERAL, PRIVAE SECURITY REGULATORY
AUTHORITY 3RD RESPONDENT**

RULING

1. I have been called to determine an application dated 28th March, 2024 for review of this court’s decree passed on 11th March, 2024, which in essence struck out from this court’s jurisdiction. The applicants argue that this is a repeated transfer noting the suit was initially at the Employment and Labour Relations Court at Nairobi before being transferred to the High Court which now has made a vice versa transfer causing undue delay and has resulted in failure to obtain justice.
2. The applicant sought orders as follows:
 - a. Spent
 - b. This Honourable Court be pleased to review and or set aside the orders issued on the 11.3.2024 dismissing the Petition in its entirety.
 - c. The costs of this application be provided for in the cause.



3. The application is founded on grounds that there is an error apparent on the face of the record on this court's ruling delivered on 11th March, 2024 upholding the preliminary objection and dismissing the Petition in its entirety.
4. That it is of paramount importance that the said orders be reviewed and have the same determined on merits and that the Respondent will not be prejudiced in any way if the orders sought herein are granted as prayed.
5. The parties equally filed rival submissions in agitating their positions as to the issue of review.

Petitioners Written Submissions

6. Learned Counsel Mr. Nyamweya for the Applicants filed written submissions dated 29th May, 2024 in support of the application. By way of background, Learned Counsel stated that the circumstances leading to the suit herein are that on 31.01.2024, the Petitioners', registered companies within the Republic of Kenya, with the 2nd and 3rd Petitioners being consumers of the services provided for by the 1st Petitioner, a private security firm licensed under the *Private Security Regulation Act* and a member of the Kenya Security Industry Limited, filed an application seeking the cessation of the circulation of an illegal legal notice issued by the 3rd Respondent.
7. The 3rd Respondent on the 29.1.2024 issued a circular in which gave force and effect to an illegal Legal Notice No. PSRA/005/2023. The Notice is sham and has no force of law, unconstitutional null and void. The Notice, No. PSRA/005/2023, purportedly became operative and in force on the 2/12/2023. The Notice was never gazetted and it was only a proposal by the 3rd Respondent to the 1st Respondent its parent ministry, to be forwarded by the Cabinet Secretary in charge of the 1st Respondent to the Cabinet Secretary in charge of Labour. That the 3rd Respondent caused the issuance of the Legal Notice No. PSRA/005/2023 dated the 2.11.2023 without any public participation, publishing on their website which is run and maintained by them on the same day it was issued and was only made only public on the 25.11.2023, 24 days after issuance.
8. That the Legal Notice No. PSRA/005/2023 introduces heavy penalties and new raft of measures which for the issuance of licenses cannot be sustained by the current economic conditions. The 3rd Respondent conducting themselves fraudulently, illegally, unprocedurally and by misrepresenting themselves without consultation, caused the impugned Legal Notice No. PSRA/005/2023 to be issued
9. Learned counsel Mr. Nyamweya submitted that the grounds for review are succinctly laid down by Order 45 Rule 1 of the Civil Procedure Rules and Section 80 of the *Civil Procedure Act*. On the same breadth he cited the decision in Francis Njoroge v Stephen Maina Kimore (2018) eKLR. Counsel challenged the decision to strike out the case on the following grounds:
 - a. Mistake or error Apparent on the face of the record.
 - b. Unnecessary delay and injustice
10. On the question of mistake and error apparent on the face of the record, it was counsel's argument that Article 165(3)(d) of *the Constitution* grants the High Court the authority to hear matters concerning the interpretation of *the Constitution* and to determine the constitutionality of actions by state organs. The present matter involves questioning the constitutionality of the 3rd Respondent's actions which falls squarely within the Jurisdiction of the High Court. He opined that the continuous transferring of the suit between the ELRC and the High Court highlights a fundamental jurisdictional error. Jurisdictional errors are considered mistakes apparent on the face of the record, warranting review. He maintained that given the nature of the Petitioner's case, which involves significant constitutional



issues as to the power vested in state organs and their mandate and questions of fundamental rights as enshrined in the Bill of Rights, the High Court is the appropriate forum for adjudication

11. As for undue delay, counsel submitted that the applicants have faced undue delay due to the continuous transfer of their case. This delay has prevented them from obtaining the justice they have long sought, contrary to the principles of fairness and timely resolution of disputes.
12. That the undue delay caused by jurisdictional transfers significantly impacts the applicants' ability to have their case heard and determined. He cited the case of *Fran Investment Limited v G4S security Service Limited (2015) eKLR*, where the court underscored that justice delayed is justice denied. The prolonged uncertainty and lack of resolution have subjected the applicants to continued hardship, thus denying them timely justice.

3rd Respondent's Written Submissions

13. Learned Counsel Mr. Okoth filed submission dated 27th May, 2024 on behalf of the 3rd Respondent. Counsel submitted that the application dated 28th March, 2024 is irregularly in court since applicant in an application for review must annex a formal extracted Decree or order in respect of which the review is sought. Where an applicant fails to annex the order sought to be reviewed, an application is defective. On this he cited the case of *Suleiman Murunga V Nilestar Holdings Limited*.
14. According to Mr. Okoth, the power to review a decision of the court can only be exercised on (a) the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the petitioner's knowledge or could not be produced at the time when the order was made. (b) on account of an error apparent on the face of the record or for any other sufficient reason. Learned counsel's view is that the applicants have deliberately or inadvertently misrepresented the dispute in ELRC Petitioner E013 of 2024 with the hope that it may persuade this court to review its decision.
15. It was submitted for the 3rd Respondent that ELRC Petition [E013 of 2024](#) pertained a separate and distinct issue. The matter before this court was a challenge on Legal Notice No. PSRA/001/2024 dated 5th February 2024. That what is before this court is Legal Notice No. PSRA/005/2023 dated 5th November, 2023.
16. That the two legal notices are like day and night, they are distinct, and provide for separate issues
 - a. ELRC Petition [E013 of 2024](#) was a Petition by 5 security companies challenging the revocation of their licenses to operate as private security service provider.
 - b. The crux of the dispute and prayers sought therein were completely different from the Petition before this court.
 - c. Hon Justice Ngibuini in her ruling rightly held at para 18 that the cancellation of the license to operate is not an employer-employee dispute it is in her view a regulatory issue between the said security firms and the relevant governing bodies.
 - d. The Petitioners were claiming loss of business and that is why the court referred the dispute to the High Court Commercial and Tax Division
17. Mr. Okoth submitted that the Legal Notice PSRA/005/2023 is currently under active litigation in the Employment and Labour Relations Court in Nairobi, specifically in the Employment and Labour Relations Court Constitutional Petition [E011 of 2024](#) presided over by Justice Jacob Gakeri and Justice Nduma Nderi respectively. It is noteworthy that this matter was filed on 5th December, 2023, preceding the filing of the instant case.



18. That the court in *Petition E011 of 2024* has issued a conservatory order suspending the implementation and enforcement of Legal Notice PSRA/005/2023.
19. That Employment and Labour Court Constitution *Petition E011 of 2024* and this case challenge the same Legal Notice PSRA/005/2023 on the same grounds, cite similar issues, similar facts, and the prayers sought are wholly if not substantially the same.
20. Learned counsel Concluded by submitting that applying the test for review to the instant case, it is clear that all the grounds advanced and canvassed by the applicant are not proper grounds for a review, just as an example, it has been urged before the learned judge that there is an error apparent on the face of the record but no such self-evident error has been pleaded with particularity. Another ground was that the Respondents have engaged the applicant in endless negotiations. With respect and as a matter of precedent the exercise of discretion on review is not as wide as claimed by the applicant. He prayed that the application dated 27th May, 2024 be struck out in its entirety and dismissed in limine with costs in favour of the respondents.

Decision

21. Under section 80 of the *Civil Procedure Act* and order 45 rule 1 of the Civil Procedure Rules, the court may review its decision, inter alia: - on account of some mistake or error apparent on the face of the record, or for any other sufficient reason.
22. Section 80 of the *Civil Procedure Act* Cap 21 provides as follows: -

“ 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.”

Order 45 Rule 1 of the Civil Procedure Rules, 2010 provides as follows: -

“ 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.”

23. In *Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] eKLR High Court of Kenya Nairobi Judicial Review Division Misc. Application No. 317 of 2018* John M. Mativo Judge culled out the following principles from a number of authorities: -

- i. A court can review its decision on either of the grounds enumerated in Order 45 Rule 1 and not otherwise.
- ii. The expression "any other sufficient reason" appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds.
- iii. An error which is not self-evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of record justifying exercise of power under Section 80.
- iv. An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
- v. A decision/order cannot be reviewed under Section 80 on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.
- vi. While considering an application for review, the court must confine its adjudication with reference to material, which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.
- vii. Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.
- viii. A mistake or an error apparent on the face of the record means a mistake or an error, which is prima-facie visible and does not require any detail examination. In the present case the petitioner has not been able to point out any error apparent on the face of the record.
- ix. Section 80 of the Civil Procedure Code provides for a substantive power of review by a civil court and consequently by the appellate courts. The words occurring in Section 80 mean subject to such conditions and limitations as may be prescribed thereof and for the said purpose, the procedural conditions contained in Order 45 Rule 1 must be taken into consideration. Section 80 of the Civil Procedure Code does not prescribe any limitation on the power of the court, but such limitations have been provided for in Order 45 Rule 1.



- x. The power of a civil court to review its judgment/decision is traceable in Section 80 CPC. The grounds on which review can be sought are enumerated in Order 45 Rule 1.”

24. Discussing the range of review, the Supreme Court of India in the case of Ajit Kumar Rath vs State of Orisa & Others, 9 Supreme Court Cases 596 at Page 608. had this to say:-

“the power 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 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 stabling it. It may be pointed out that the expression “any other sufficient reason” means a reason sufficiently analogous to those specified in the rule”

25. The Ruling that the applicant seeks to review was delivered on 11th March, 2024. This court decreed thus;

“In that view of the matter, it has become unnecessary for this court to go into more factual details of the Petition on the merits. The same is accordingly disposed of for want of jurisdiction and the doctrine of res sub judice. Be that as it may I down my tools to exercise any further jurisdiction on the cause of action and as a consequence the same is dismissed with costs to the Respondents.”

26. This court rendered itself on the question of jurisdiction vide its ruling dated 11th March, 2024. The court underscored the fact that in relation to the proper forum to raise its constitutional issues that are integrally linked to the predominate cause of action and the interpretation of the questions raised in the petition besides the collateral issues, the proper forum would be ELRC.

27. I reiterate in the umpteenth time that a court of concurrence jurisdiction cannot persuade me to assume jurisdiction which is well set out in *the constitution* and corresponding statutes. The answer of the dispute by the Petitioners lies squarely in the famous dicta of the court in the following authorities being Public Service Commission & 2 others versus Eric Cheruiyot & 16 others and County Government of Embu & Another v Eric Cheruiyot & 15 others in which the Court of Appeal rendered itself as follows:

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- “36. Jurisdiction is everything, it is what gives a court or a tribunal the power, authority and legitimacy to entertain a matter before it. John Beecroft Saunders in “Words and Phrases Legally Defined”, Volume 3 at Page 113 defines court jurisdiction as follows:

By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of the matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to



kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”

28. That is what similarly the Supreme Court in the matter of IEBC (2011) eKLR emphatically stated that a court may not arrogate to itself jurisdiction through the craft of interpretation or by way endeavors to discern or interpret the intentions of parliament, where the wording of legislation is clear and there is no ambiguity.
29. This claim by the Petitioners is a shut case under Art. 162(2)(a) as construed with Section 12 of the *Employment and Labour Relations Court Act* which spells out clearly the jurisdiction of the court. Incidentally the court also has jurisdiction to hear constitutional matters arising out of an employment dispute such as a breach of a constitutional right. Jurisdiction is also divided into jurisdiction of actions in rem and jurisdictions of actions in personam. The distinction between the two is clearly deducible in the terms of the character of the Petition and the judgment the court will render finally upon readmitting the legal and factual content of the petition. On such a basis, it is unnecessary for a party to say that the rights asserted are justiciable within the High Court. As an ideal aspect of our constitutional system, a court without jurisdiction is in my view like an unplugged device or appliance which will not function to achieve its intended purpose.
30. For those reasons, the applications filed by the Petitioners inviting this court to exercise review jurisdiction under Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules be and is hereby dismissed with costs to the Respondents for want of merit

DATED SIGNED AND DELIVERED AT ELDORET, THIS 20TH DAY OF SEPTEMBER 2024

R. NYAKUNDI

JUDGE

In the Presence of

Mr. Kiptoo for Plaintiff

