



REPUBLIC OF KENYA



KENYA LAW

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**Gusinjilu (Suing on his own behalf and that of 112 Plaintiffs) v Kenya
Trypanosomiasis Research Institute (Commercial Case E023 of 2021)
[2023] KEHC 17692 (KLR) (Commercial and Tax) (12 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17692 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E023 OF 2021
DO CHEPKWONY, J
MAY 12, 2023**

BETWEEN

ANTHONY KABIMBA GUSINJILU PLAINTIFF

SUING ON HIS OWN BEHALF AND THAT OF 112 PLAINTIFFS

AND

KENYA TRYPANOSOMIASIS RESEARCH INSTITUTE RESPONDENT

RULING

1. What is before court for determination is the Notice of Motion application dated 28th October, 2022 filed pursuant to Order 45 Rule 1 of the Civil Procedure Rules. It seeks review of this Court's ruling delivered on 28th October, 2022 and for the court to preserve a fresh ruling date of the Application dated 16th December, 2009.
2. It is the Applicant's case that this Court in the Ruling delivered on 28th October, 2022, indicated that the application dated 16th December, 2009 had already been dealt with by Hon. Justice D.A Onyancha in the Ruling of 22nd September, 2014. The Applicant argues that there was an appeal filed in respect to that ruling to wit Nairobi Court of Appeal No.190 of 2015 where Justice Waki, Warsame and Sichale in the Judgment delivered on 25th October, 2019 allowed the Appeal and reinstated the application dated 16th December, 2009 with directions that it be heard on priority basis.
3. This court has perused through the file and notes that indeed the Court of Appeal reinstated the Application dated 16th December, 2009. It is further noted that in the court ruling of 29th June, 2021, the ELRC Case No.84 of 2020, this matter was transferred to this court for hearing and determination as directed by the Court of Appeal.



4. The power to review a decision or order of a court is provided for under Order 45 of the *Civil Procedure Rules* and Section 80 of the *Civil Procedure Act*.
5. Order 45 of the Civil Procedure Rules provides:-
 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.
6. Section 80 of the *Civil Procedure Act* provides:-

“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.
7. For an application for review to succeed under Order 45 of the Civil Procedure Rules, 2010, the following grounds exist:-
 - 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.
8. In this case, the application was brought without inordinate delay since it was filed on the same day of the impugned ruling which was on 28th October, 2022. Also a perusal of the court record confirms that the Court of Appeal reinstated the application dated 16th December, 2009. Also it is noted that



vide a ruling delivered on 29th June, 2021, the ELRC Case No.84 of 2020 was transferred to this Court for hearing and determination as had been directed by the Court of Appeal.

9. In view of the above finding, this Court's ruling of 28th October, 2022 is hereby set aside. It is then acknowledged that the parties had already filed their submissions in respect to the application dated 16th December, 2009. Accordingly, this Court proceeds to issue a date for ruling on the application 16th December, 2009.
10. The upshot is that the application dated 28th October 2022 is hereby allowed as prayed with directions that:-
 - a. Ruling on the application dated 16th December, 2009 be and is hereby set for 4th July, 2023.
 - b. Notice to issue upon the Defendant and or its counsel.
 - c. Costs to be in the cause.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 12TH DAY OF MAY 2023.

D.O CHEPKWONY

JUDGE

In the presence of:

M/S Maina counsel for Plaintiff

No appearance for and by the Respondent

Court Assistant - Mwenda

