



Vincent v Langat & 5 others; Omollo & 15 others (Interested Parties) (Election Petition Appeal E001 of 2023) [2023] KEHC 22471 (KLR) (20 September 2023) (Ruling)

Neutral citation: [2023] KEHC 22471 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
ELECTION PETITION APPEAL E001 OF 2023**

JK SERGON, J

SEPTEMBER 20, 2023

BETWEEN

KOSKEI KIPNG'ETICH VINCENT APPELLANT

AND

BEATRICE CHEPKOECH LANGAT 1ST RESPONDENT

EVANS KURGAT 2ND RESPONDENT

BENJAMIN KIPKORIR KOECH 3RD RESPONDENT

UNITED DEMOCRATIC ALLIANCE PARTY (UDA) 4TH RESPONDENT

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION
(IEBC) 5TH RESPONDENT**

THE CLERK OF THE COUNTY ASSEMBLY OF KERICHO . 6TH RESPONDENT

AND

OPILE NOELLA OMOLLO INTERESTED PARTY

ISSACK MATKEIR INTERESTED PARTY

MERCY NJERI GIKONYO INTERESTED PARTY

KEINO CHEPNG'ETICH DORAH INTERESTED PARTY

CHEPKIRUI EDINA TONUI INTERESTED PARTY

BEATRICE CHEPKEMOI INTERESTED PARTY

KORIR FANCY CHEPKORIR INTERESTED PARTY

LANGAT IRENE CHEBET INTERESTED PARTY

CHELANGAT MONICA INTERESTED PARTY

CHEPWOKEN EVALYNE INTERESTED PARTY



CHEPKURUI BAVINA CHEPKURUI	INTERESTED PARTY
BETT GLADYS CHESANG	INTERESTED PARTY
CHEPNGENO CHEPNGENO JESCA	INTERESTED PARTY
LANGAT CHEPKOECH WINNY	INTERESTED PARTY
SIRMA LILY CHEPKEMOI	INTERESTED PARTY
CHEPNGENO GABRIELA	INTERESTED PARTY

Jurisdiction of the High Court to review its decision where there was a mistake in its judgment

The application sought the review of the mistakes/errors apparent on the face of the judgment by the High Court. The court found that there was an error or mistake which was apparent. Further, the trial court erred in finding that persons with disability ranked in priority over youths and other marginalized group. In the circumstances, the court held that it was entitled to recall its decision for purposes of correcting the error or slip to give effect to the manifest intention of the decision.

Reported by Kakai Toili

Jurisdiction – jurisdiction of the High Court – jurisdiction to review its decisions – scope - whether the High Court could review its decision where there was a mistake in its judgment where it dismissed an appeal but disagreed with the trial court.

Brief facts

The application sought among other orders; that the mistakes/errors apparent on the face of the judgment delivered and issued on May 24, 2023 be corrected by way of review. The applicant submitted that from the judgment of the court delivered on May 24, 2023 that there were patent mistakes or errors of law or otherwise apparent on the face of record which ought to be corrected by way of review with the end result that the appeal succeeds. The applicant pointed out that the 4th issue framed by the court for determination in the judgment was *whether persons with disability were nominated or otherwise appointed in priority over youths and other marginalized groups.*

The applicant further pointed out that in the judgment, the court came to the conclusion that persons living with disabilities and youths were in the same category and therefore none of them ranked higher than the other and therefore it was upon the political party to identify the special interest in the broad sense and nominate the person falling within the special interest group to represent every person in that group. The applicant stated that the court having come to that conclusion should have allowed the appeal in terms of grounds 10, 11 and 12 of the memorandum of appeal. On May 24, 2023, the court delivered its judgment whereof it dismissed the appeal and upheld the decision of the trial court.

Issues

Whether the High Court could review its decision where there was a mistake in its judgment where it had dismissed an appeal but disagreed with the trial court.

Held

1. After considering the arguments put forward, the court came to the conclusion that person with disability and the youths were in the same category and none ranked higher than the other and therefore it was upon the political party to identify the special interest in that broad sense and to nominate a person or persons falling within the special interest group to represent every person in that group.
2. The trial court stated in its judgment delivered on February 10, 2023 that persons with disability were nominated or otherwise appointed in priority over youths and or other marginalized groups. There was an error or mistake which was apparent. The trial court erred in finding that persons with disability ranked in priority over youths and other marginalized group. In the circumstances, the court was



- entitled to recall its decision for purposes of correcting the error or slip to give effect to the manifest intention of the decision. The court made an accidental slip which could be corrected by review.
3. The finding that persons with disability and the youth were in the same category and none ranked in priority over the other should have led to the automatic allowance of the appeal in terms of grounds 10, 11 and 12 of the memorandum of appeal. Those grounds could not be treated as peripheral grounds. In the circumstances, the judgment should be corrected and rectified by way of review.
 4. The court's finding that it did not matter whether the appellant was heard or not before the decision was made did not merit to be treated as a ground for review. The court made a conscious decision before coming to the conclusion. The ground was basically a ground for appeal which could not be entertained as a ground for review.

Application allowed.

Orders

- i. *The court's judgment delivered on May 24, 2023 dismissing the appeal was set aside and was substituted with an order allowing the appeal. The judgment of the trial court delivered on February 10, 2023 vide Kericho Chief Magistrate Court, Election Petition No E002 of 2022 was set aside and was substituted with an order dismissing the petition dated September 16, 2022.*
- ii. *Each party to bear its own costs.*

Citations

Statutes

None referred to

Advocates

None mentioned

RULING

1. The subject matter of this ruling is the motion dated May 25, 2023 taken out by the applicant in which he sought for the following orders *inter alia*:
 - a.spent.
 - b.spent.
 - c. That the mistakes/errors apparent on the face of the Judgment herein delivered and issued on May 24, 2023 as enumerated in this application be corrected by way of review and
 - d. That costs of this application be provided for. The appellant/applicant filed an affidavit he swore in support of the motion.
2. The 1st, 2nd and 3rd respondents filed a replying affidavit sworn on June 19, 2023 to oppose the motion. The 4th respondent was in support of the appellant's application.
3. When the aforesaid motion came up for interpartes hearing, this court gave directions to have the application disposed of by written submissions.
4. The appellant and the 1st, 2nd and 3rd respondents filed submissions to oppose the aforesaid motion while the 4th respondent together with the appellant filed written submissions in support of the motion.



5. I have considered the grounds stated on the face of the appellant's motion plus the facts deponed in the rival affidavits. I have equally considered the rival written submissions.
6. It is the submission of the applicant that it is obvious from the judgment of this court delivered on May 24, 2023 that there are patent mistakes or errors of law or otherwise apparent on the face of record which ought to be corrected by way of review with the end result that the Appeal succeeds.
7. The applicant argued that this court has inherent power to recall its Judgment in order to give effect to what clearly manifests the intention to allow the appeal.
8. The applicant pointed out that the 4th issue frame by this court for determination in the Judgment was whether persons with disability are nominated or otherwise appointed in priority over youths and other marginalized grounds.
9. The applicant also pointed out that in the judgment, this court came to the conclusion that persons living with disabilities and youths are in the same category and therefore none of them ranks higher than the other and therefore it was upon the political to identify the special interest I broad sense and nominate the person falling within the special interest group to represent every person in the said group.
10. The applicant further stated that the court having come to that conclusion should have allowed the appeal in terms of grounds 10, 11 and 12 of the memorandum of appeal.
11. The applicant also pointed out that this court made a finding which is to the effect that the appellant/applicant was not served with the pleadings and proceedings in the trial court despite having been directly affected.
12. This court is said to have come to the erroneous finding that it was inconsequential whether or not the appellant was heard.
13. The 4th respondent is in support of the appellant's application arguing that the application meets the threshold of an application for review. The 4th respondent pointed out that the error is so apparent that it does not require proof in a long-drawn process of debate and reasoning.
14. The 4th respondent argued that the appellant/applicant has demonstrated that the errors contained in the judgment delivered on May 24, 2023 speak for themselves and do not require any debate or long drawn reasoning.
15. On the other hand, the 1st, 2nd and 3rd respondents opposed the applicant's application. They pointed out that a dismissal of the main grounds of appeal renders the entire appeal a failure and its dismissal is the only result and any success on the fringe grounds of appeal does not change the outcome of the appeal.
16. The 1st, 2nd and 3rd respondent further argued that the court may have reached a wrong conclusion of the law which should be a ground of appeal and not for review therefore, the Application for review must fail.
17. It was pointed out that the main grounds of appeal failed after a judicially conscious determination hence the success of grounds 11, 12 and 13 of the appeal were inconsequential as they only address a position in law.
18. Having considered the material placed before this court plus the rival submissions, it is not in dispute that on May 24, 2023, this court delivered its judgment whereof it dismissed the appeal and upheld the decision of the Chief Magistrate's Court.



19. It is not in dispute that this court framed the 4th issue as follows:

Whether persons with disability are nominated or otherwise appointed in priority over youths and other marginalized groups.

20. After considering the arguments put forward, this court came to the conclusion that person with disability and the youths are in the same category and none ranks higher than the other and therefore it is upon the political party to identify the special interest in that broad sense and to nominate a person or persons falling within the special interest group to represent every person in the said group.

21. It is also apparent that the appellant put forward the following grounds *inter alia*:-

- a. That the learned trial magistrate erred in Law in ordering the replacement of the appellant's name in the 4th respondent party list.
- b. That the learned trial magistrate erred in Law in holding that persons with disability are nominated or otherwise appointed in priority over youths and or other marginalized groups.
- c. That the learned trial magistrate erred in law in not finding that persons with disabilities are in the same cluster of special seats as youths and other marginalized groups and which general cluster takes priority over other classes of persons and further that nominating or otherwise appointing anyone in the said cluster of seats fulfils the requirements of all the relevant this election laws as regards marginalized groups.

22. It is not also in dispute that the learned Senior Resident Magistrate stated in his judgment delivered on February 10, 2023 that persons with disability are nominated or otherwise appointed in priority over youths and or other marginalized groups. With respect, I am persuaded by the appellant/applicant's argument that there is an error or mistake which is apparent. It is obvious that the learned Senior Resident Magistrat erred in finding that persons with disability rank in priority over youths and other marginalized group.

23. In the circumstances, this court is entitled to recall its decision for purposes of correcting the error or slip to give effect to the manifest intention of the decision. It is obvious that the court made an accidental slip which can be corrected by review..

24. The finding that persons with disability and the youth are in the same category and none ranks in priority over the other should have led to the automatic allowance of the appeal in terms of grounds 10, 11 and 12 of the memorandum of appeal. Those grounds cannot be treated as peripheral grounds as suggested by the 1st, 2nd and 3rd respondents.

25. In the circumstances, the judgment should be corrected and rectified by way of review.

26. The second issue which was ably argued by the parties relate to this court's finding that it did not matter whether the appellant was heard or not before the decision was made.

27. Having considered the rival arguments, i have come to the conclusion that ground does not merit to be treated as a ground for review. It is clear from the Judgment that this court made a conscious decision before coming to the aforesaid conclusion.

28. The grounds is basically a ground for appeal which cannot be entertained as a ground for review.

29. In the end, I find merit in the appellant/applicant's motion dated May 25, 2023. The motion is allowed.



30. Consequently, this court's Judgment delivered on May 24, 2023 dismissing the appeal is set aside and is substituted with an Order allowing the appeal. The Judgment of Hon FM Nyakundi, Senior Resident Magistrate delivered on February 10, 2023 vide Kericho chief Magistrate Court, Election Petition No E002 of 2022 is set aside and is substituted with an order dismissing the petition dated September 16, 2022.
31. In the circumstances of this appeal, a fair order on costs is to order which I hereby do that each party meets its own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 20TH DAY OF SEPTEMBER, 2023.

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J.K. SERGON

JUDGE

In the presence of:

C/Assistant – Rutoh

