



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CIVIL APPEAL NO. 126 OF 2009**

**MICHAEL KUNGU KIGIA.....APPLICANT**

**VERSUS**

**KENYA NATIONAL OF UNION OF TEACHERS, MERU BRANCH.....RESPONDENT**

**RULING**

1. When the entire record of this appeal is perused and duly appreciated it comes to the fore that the court has been obstructed from achieving its mandate in expeditious disposal of legal disputes. That becomes an indictment upon the court and its officers mandated to meet that obligation to the Kenyan public. That perusal further reveals that the bulk of the time has been spent on applications that achieve little to address the real dispute in controversy or facilitate existing orders. It is a practice that ought to stop by the court reminding the parties that litigation must come or be brought to an end.

2. Once again, as is the norm in this file, the court is confronted with two applications, one from the appellant and another by the one Meru Teachers House Ltd (hereinafter called the applicant. The appellant's application is dated 14/4/2019 and seek from the court orders that-;

**i. That this Honourable court do issue an order to review the ruling issued on 15<sup>th</sup> July 2019 as there was no case No. 25 of 2009 and except erroneously Misc. application 10 of 2018 and Misc. application 145 of 2010 that were left out as per paragraph 17 of the ruling issued on 15<sup>th</sup> July 2019.**

**ii. That this Honourable court do issue an order on taxed bill of 3<sup>rd</sup> July 2003 of awarded costs of Kshs 350,945 with effect from 24<sup>th</sup> May 1991 in High court case No. 180 of 1991 that is no any filed defenses as Meru Teachers House Ltd were displaced under 24<sup>th</sup> September, 1998 in Cmcc 153 of 1997 hence no appeal.**

**iii. That the Honourable court do issue an order against the ruling issued on 15<sup>th</sup> July 2019 paragraph 15 as kshs. 19,625 were paid to law firm of Gatari Ringera & Co advocates by appellant advocate B.G Kariuki & Co. Advocate and unlawfully and illegally the Meru Teachers House Ltd did obtain warrants of attachment dated 29/7/2011 and good of over 1 million were confiscated by Meru Teachers through none-exist auctioneers.**

**iv. That Honourable court having noted the orders issued on 27/10/1992 in High Court case No. 180 of 1991 by Justice R. Kuloba Judge and court order issued on 24<sup>th</sup> September, 1998 in CMCC 153 of 1997, all inforce, unchallenged up to date (2019) do issue an order against the ruling issued on 15<sup>th</sup> July 2019 paragraph 11 due to ruling issued in court of appeal in Malindi on Wednesday July 31 2019 hence no defence filed in this suit.**

**v. That costs of this application be condemned upon the defendant and Meru Teachers House Ltd.**

3. The second application is that by Meru Teachers House Ltd, dated 21/09/2019 and seeks order that-;

**a) That the Honourable court be pleased to correct the error in paragraph 15 of its ruling delivered on 15/7/2019 by indicating that the correct amount of costs assessed for Meru Teachers House Ltd in this appeal taxed on 11/10/2013 was Kshs 51,185/= and not Kshs 19,625/=.**

**b) That the Honourable court be pleased to amend and/or correct parts of its ruling delivered on 15/7/2019 particularly the orders made at page 7 paragraph 17 by removing case No. 25 of 2009, 24 of 2017, 25 of 2017 and 44 of 2017 from the said ruling as there are no such cases pending between the appellant and the Meru Teachers House Ltd (applicant herein) before this Honourable court.**

**c) That costs of this application be provided for.**

4. The focus of both applications is clearly the ruling by Gikonyo J. dated 5/7/2019. For that reason, the court deemed it expedient to have the two argued together and the preliminary objection by the appellant being considered as an opposition to the appellant's application. The preliminary objection on its part asserts that:

*a. The notice of motion dated 22/1/2018 is filed without the leave of the court as ordered by the court on 01/08/2013.*

*b. The notice of motion dated 22/1/2018 should be struck out with costs to Meru Teachers House Ltd."*

**Outline of the Facts:**

5. The record reveals that the appeal was filed and presented against Kenya National Union of Teachers until the 26/7/2012 when by an application of that date seeking orders for review, Meru Teachers House Ltd, were cited and made a respondent to the application in the appeal.

6. The best summary is found in the ruling subject of the two applications and the career of the matter in court is aptly described by the judge as "not so rosy in history". For that *not so rosy history* the judge underscored the need to bring the matter to a closure and clarified that the only matter that needs to be undertaken is the settlement of costs of the applicant, Meru Teachers House, which were awarded, taxed and remains to be settled.

7. Now that ruling is what the appellant seeks to be reviewed so that the costs awarded to the applicant be deemed paid, paragraph 17 of the ruling be rectified and that it be noted that the applicant never filed any defence.

8. For the applicant, the orders sought can be viewed to be seeking the application of the slip rule so as to correct the sum awarded and taxed for costs and to exclude the court cases referred to at paragraph 17 of the ruling because such cases never existed between parties.

**Analysis and Determination**

9. The appellant's application must be seen and considered on the basis that it seeks review to give a different determination by the ruling of 15/7/2019 while that by the applicant is aimed at arresting what is considered a slip in the ruling.

**Review Orders**

10. When to issue orders for review is a well-trodden path but one that must be distinguished from orders on setting aside, correction of clerical nature and orders on appeal.

11. An order on review can only be issued when the applicant demonstrates an error of facts, not law, apparent on the face of the record, where there emerges a matter of evidence that did not exist at the time of the decision and one that could not have been availed by the applicant, even with the application and employment of one diligence and for the sake of justice, the court is then given a latitude to order review for a sufficient reason<sup>[1]</sup>

12. My reading of the appellant's application is that it agrees with the applicant that there have never been suits No. 25 of 2009, 24 of 2017, 25 of 2017 and 44 of 2017 and therefore there was a slip by the court at paragraph 17 of the ruling that needs to be corrected. There is also a concurrence that the costs taxed in favour of the applicant was 51,185, and not 19,625.

13. I see no dispute but a convergence of concerns that the judgment should be made clearer and efficacious so that outright clerical mistakes are corrected and removed from the decisions.

14. It is also clear to me that this court has no power to make orders in those matters that pend before The Environment and Land Court. On that I wholly agree with the applicant that any reference affecting the outcome to a matter pending before the Environment and Land Court must be expunged from the record of this file.

15. For those reasons, I do find that it is in the interest of neatness and accuracy of the court record, paragraph 15 and 17 of the ruling dated 15/7/2019 be corrected. I order correction on basis that the same are clearly typographical and clerical in nature and do not alter the purport and tenure of the decision. For the same reasons the two paragraphs shall stand corrected to read-;

**"It bears repeating the reply by Desderio Nyamu Nyaga and dated 22<sup>nd</sup> March 2018 that the appellant dragged M/s Meru Teachers House Ltd into these proceedings when he filed the application dated 26<sup>th</sup> July 2012. The application was heard and subsequently dismissed with costs in favour of M/s Meru Teachers Ltd. The costs were eventually taxed in favour of Meru Teachers House Ltd at kshs. 19,625/= 51,185/="**

Para 17 change to read-;

**"As parties intimated to the court that all suits and proceedings based on this cause of action be withdrawn, I direct subject to this ruling that ~~case No. 25 of 2009, No. 24 of 2017, No. 25 of 2017 and No. 44 of 2017~~ all suits excluding the suits before the environment and land court, in so far as they are based on the cause of action herein are withdrawn with no orders as to**

**costs.**

16. Having heard the two applications on the merits, it follows that the preliminary objection fails not because it lacked merit but because the justice of the case and the need to bring the file to close has overridden the need to accede to it.

17. This ruling shall be placed in all files affected by it for appropriate action. In coming to this conclusion, I do give regard, as judge Gikonyo did, to the fact that the decision by Lesiit, J. delivered on 01/08/2013 remain unchallenged and cannot be ignored.

18. I now reiterate that the appellant shall comply with that order by Lesiit J, as she then was, and observe the command that it shall file no further action of application arising out of the cause of action in this appeal or indeed file any other application without the leave of the court. It is further ordered that, the appellant shall pay the taxed costs within 30 days from today and on default the applicant be at liberty to execute. These are the orders I consider to be appropriate in bringing this file to a closure.

19. I make no orders as to costs of the two applications, for the reason that this matter now deserve a closure

**DATED, SIGNED AND DELIVERED AT MERU BY MS TEAMS THIS 2ND DAY OF JULY 2021**

**PATRICK J.O OTIENO**

**JUDGE**

**In presence of**

Appellant in person

Mr. Nyamu Nyaga for applicant

**PATRICK J.O OTIENO**

**JUDGE**

[\[1\]](#) Order 45 Rule 1(b)