



**Board of Management (Governors) Workers High School v Warui & 3 others (Environment and Land Appeal E037 of 2022) [2025] KEELC 6295 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6295 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND APPEAL E037 OF 2022  
A OMBWAYO, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**BOARD OF MANAGEMENT (GOVERNORS) WORKERS HIGH SCHOOL ..... APPLICANT**

**AND**

**SYMON NJUGUNA WARUI ..... 1<sup>ST</sup> RESPONDENT  
JOSEPH KARANJA ..... 2<sup>ND</sup> RESPONDENT  
DAVID OGEA ..... 3<sup>RD</sup> RESPONDENT  
STEPHEN NJUGUNA WAKOMO ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

**Brief Facts**

1. The Applicant filed the instant application dated 5th Jun, 2024 seeking the following orders:
  - a. Spent.
  - b. That this Honourable be pleased to vary or set aside its orders dismissing the Appellant's application dated 2<sup>nd</sup> May, 2024 for non-attendance.
  - c. The Notice of Motion application dated 2<sup>nd</sup> May, 2024 be and is hereby reinstated for hearing and determination on merit.
  - d. The costs of this Application be in the cause.
2. The Application was based on grounds set out and supported by the Affidavit of Affline Aoko advocate for the Applicant.



3. She stated that there was a valid order made on 5<sup>th</sup> June, 2024 which dismissed the Applicant's application dated 2<sup>nd</sup> May, 2024 for non-attendance. She further stated that her non-attendance was due to an honest mistake as she was addressing another court and did not hear the present matter being called out. She stated that upon the matter being recalled, she realized that had been dismissed for non-attendance. She went on to state that she tried reaching the opposing counsel in order to have the orders vacated in vain. She added that she immediately filed the present application for reinstatement as the Applicant was still desirous of prosecuting the application dated 2<sup>nd</sup> May, 2024. She stated that the said application was not heard on merit and the same was dismissed prematurely. She also stated that no prejudiced would be occasioned to the Respondent in reinstating the application dated 2<sup>nd</sup> May, 2024 beyond the scope of costs.

### **Response**

4. The Respondent did not file any response to the application.

### **Submissions**

5. Counsel for the Applicant filed his submissions dated 3<sup>rd</sup> September, 2024 where he identified two issues for determination. The first issue was whether the Appellant/Applicant's application is merited. While submitting in the affirmative he relied on Article 50 of *the constitution* and a number of authorities including *Mokaya V Westland Property Limited (Civil Appeal 211 of 2020) [2023] KEHC 23809 (KLR)* and *Habo Agencies Limited V Winfred Odhiambo Musingo (2020) eKLR*. He submits that his failure to attend court on the said day was not deliberate as he was addressing another court being Hon. Juma and thus did not hear when the matter was called out. He submits that efforts to reach the opposing counsel to re-log into court for the orders to be vacated did not avail much. He submits that the present application was filed without inordinate delay.
6. The second issue on costs of the instant application, counsel submits that the same ought to be in the cause.

### **Analysis and Determination**

7. This court has considered the application and the main issue for determination is whether the Applicant is deserving of the review orders sought for.
8. The jurisdiction of this court for review of orders is provided for under Order 45 Rule 1 (1) of the Civil Procedure Rules which provides as follows:
  1. Application for review of decree or order
    - (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.”

9. It is this court’s view that the basis of an application for review of an order is on the recovery of new and important matters or evidence which after due diligence, was not within the Applicant’s knowledge or could not be produced by them at the time when the order was made. Further an application for review may also be made on account of some mistake or error apparent on the face of the record, or for any other sufficient reason.
10. The Applicant has based this application of review on an inadvertent mistake by its advocate. It claims that the non-attendance on 5<sup>th</sup> June, 2024 was not deliberate as its advocate was addressing another court when the matter was called out. It annexed a copy of its court attendance sheet for that day confirming that the advocate was before another court.
11. It is not in dispute that the Applicant filed the application timeously.
12. In the circumstance, this court shall proceed to exercise its discretion and allow the application as prayed. The upshot of the foregoing is that the application dated 2<sup>nd</sup> May, 2024 is hereby reinstated for hearing on merit. Each party to bear its own costs. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**A.O. OMBWAYO**

**JUDGE**

