



**Eregay v ARN Security & Training Services Ltd; Sun Express Limited (Objector) (Employment and Labour Relations Cause 33 of 2020) [2024] KEMC 132 (KLR) (11 July 2024) (Ruling)**

Neutral citation: [2024] KEMC 132 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 33 OF 2020**

**PA NDEGE, SPM**

**JULY 11, 2024**

**BETWEEN**

**ISAAC EKAI EREGAY ..... CLAIMANT**

**AND**

**ARN SECURITY & TRAINING SERVICES LTD ..... RESPONDENT**

**AND**

**SUN EXPRESS LIMITED ..... OBJECTOR**

**RULING**

1. By an Application dated 07/05/2024, the Objector/ Applicant sought the intervention of this Court to Review its Orders made on 21/03/2024 in the matter hereof by including the motor vehicles registration numbers KCY 917H, KCY 918H, KBX 080J, KCQ 121H, KCZ 360H, KCP 091A, KCZ 550G and motor cycles registration numbers KMEY 614Q, KMEV 315W and KMFB 338T as property also exclusively belonging to the Objector/ Applicant and hence not liable to attachment in execution of the Decree of this Honorable Court; and further that the costs of this Application be in the cause. The said application is based on the grounds on the face of its and expounded and explained in the annexed Affidavit in support of the Application sworn on 07/05/24 and in particular Paragraphs 4,5,6,7, 8 and 9 are core to the Application.
2. 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.
1. Order 45 Rule 1 of the *Civil Procedure Rules*, 2010 provides as follows: -
 

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.
4. In *Republic Vrs Public Procurement Administrative Review Board & 2 Others* [2018] e KLR it was held: -
- a. Section 80 gives the power of review and Order 45 sets out the rules. The rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review limiting it to the following grounds; (a) discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or; (b) on account of some mistake or error apparent on the face of the record, or (c) for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without unreasonable delay.
5. In *PAnccras T. Swai Vrs Kenya Breweries Limited* [2014] eKLR the Court of Appeal held that Order 44 rule 1 (now Order 45 rule 1 in the 2010 Civil Procedure Rules) gave the trial Court discretionary power to allow review on the three limbs therein stated or ‘for any sufficient reason...’
6. In *Sarder Mohamed Vrs Charan Singh Nand Singh & Another* (1959) EA 793 the High Court held that Section 80 of the *Civil Procedure Act* conferred an unfettered discretion in the Court to make such order as it thinks fit on review and that the omission of any qualifying words in the Section was deliberate.
7. Discussing the scope of review, the Supreme Court of India in the case of *Ajit Kumar Rath Vrs 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

8. In *Republic Vrs Advocates Disciplinary Tribunal Ex Parte Apollo Mboya* [2019] eKLR M. Mativo Judge culled out the following principles from a number of authorities: -
- a. A court can review its decision on either of the grounds enumerated in Order 45 Rule 1 and not otherwise.
  - b. The expression ‘any other sufficient reason’ appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds.
  - c. 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.
  - d. An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
  - e. 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.
  - f. 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.
  - g. 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.
  - h. 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.
  - i. 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.
  - j. 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.
9. The issue herein is whether the case here is that of negligence or one of discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the Applicant’s knowledge. The log books attached herein were clearly available as at the time the application whose orders are being sought to be reviewed herein were made. Thus, the evidence in the log books cannot be said to have been made up specifically for this application for review. I do find the failure to include the log books in the original application to amount to mistake apparent on the face of records; and the applicant being an objector, I find that there are sufficient reasons to allow the application herein and review the orders of this court made on 21/03/2024 to include all the Objectors vehicles as per the attached log books. In any case, and pursuant to the provisions of sections 1A and 1B of the *Civil Procedure Act*, that is the Overriding Objective, this court should not be seen to be condoning endless



litigation on matters such as the present one, where there is evidence that the vehicles herein from the outset belonged to the Applicant/ objector. The upshot is that the application herein is hereby allowed as prayed.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED AT NAKURU THIS 11th DAY OF July ., 2024**

**ALOYCE-PETER-NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**

In the presence of;

Claimant's/ Respondent's counsel: Gitau

Respondent's counsel: N/A

Objector/ Applicant's counsel: Wachira

Claimant/ Respondent: n/a

Respondent: n/a

Objector/ Applicant: n/a

