Kinuthia v Registrar of Companies (Judicial Review Application 479 of 2016) [2025] KEHC 15195 (KLR) (Judicial Review) (28 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15195 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

JUDICIAL REVIEW

JUDICIAL REVIEW APPLICATION 479 OF 2016

RE ABURILI, J

OCTOBER 28, 2025

BETWEEN

JOSEPH KAMUNYA KINUTHIA .... APPLICANT

AND

REGISTRAR OF COMPANIES .... RESPONDENT

RULING

1. The application dated 13th June 2025 seeks for review of this court's ruling and orders issued on 26th May 2025. The application is brought pursuant to Order 45 of the Civil Procedure Rules, Article 159 of *the Constitution* and sections 1A and 3A of the *Civil Procedure Act*. The application is supported by a supporting affidavit sworn on 13th June 2025 by the applicantJoseph Kamunya Kinuthia.

2. The grounds upon which the review is sought is that the applicant filed an application dated 30th September 2024 seeking that the respondent be cited for contempt, however that the application was dismissed by this honourable court on 26th May 2025 on account that there had been undue delay on the part of the applicant in filing the same, and also for lack of sufficient evidence.

3. The applicant's case is that the delay was because he had filed another application JR 424 of 2018- Joseph Kimunya vs Registrar of Companies which has been in court since 2018. It is his case that the delay can be explained hence a prayer for review of the judgment based on the evidence discovered to explain the delay cited.

4. The applicant has attached to his application the ruling of Honourable Justice Jairus Ngaah dated 16th August 2024 issued in HCJR NO.424 of 2018 between Joseph Kimunya vs Registrar of Companies. In the court's ruling at paragraph 5, Hon. Justice Jairus Ngaah observes as follows:

> " My understanding of the applicant's quest for leave is that, by his letters respectively dated 8 May, 2018 and 12 June, 2018 the respondent ignored or, rather, he did not comply with this decree. The applicant is, therefore seeking to enforce the decree through a suit that he would file if leave is granted."

5. The Honourable Judge at paragraphs 6 and 7 continues to observe as follows:

> " 6. This position of the applicant is firmed by an affidavit he swore in support of an application dated 19 December 2019 in which he sought for interim relief pending the hearing of the application for leave. In paragraph 3 of the affidavit, the applicant swore as follows:
>
> "3. That I am aware that I filed his (sic) instant suit against the registrar of companies to enforce the judgment by the Honourable Justice G.V. Odunga in JR.479 of 2016 on 9th April,2018."
>
> "7. Enforcement of the order of mandamus issued in application no.479 of 2016 cannot be by way of a fresh suit. The danger with that approach is regurgitating the same issues that have otherwise been determined in the earlier instituted suit. If the applicant's case is that the respondent has disobeyed the order, the recourse open to him is contempt of court proceedings that he is entitled to institute under section 5of the Judicature which reads..."

6. In concluding at paragraph 12 on whether or not leave ought to be granted owing to the fact that the applicant had filed a fresh suit seeking to enforce orders that had been made in another suit, the learned Judge observed as follows:

> " In the applicant's case, the question whether there is any other statutory remedy that is convenient, beneficial and effectual" need not arise. To be precise, the question whether the order or decree granted in application No. 479 of 2016 can be enforced in a suit separate and distinct from the suit in which the decree was issued should not be an issue. Contempt of court proceedings against the respondent, assuming he disobeyed the court order, would not just be most convenient, beneficial and effectual means of enforcing the decree, but it is the only course available to the applicant."

7. It is upon the above order being made that the Applicant filed another application dated 30th September, 2024, seeking for an injunction and on 26th May 2025, this Court dismissed that application for an injunction against the current directors of Githunguri Constituency Ranching Company Limited.

8. The applicant now seeks an order for review of the ruling of 26th May, 2025. There was no response filed by the respondent despite service having been effected as evidenced by the affidavit of service sworn on 30th June 2025.

Determination

9. The law allows for a court of law to review or set aside its orders in certain instances. 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.

10. Order 45 Rule 1 of the Civil Procedure Rules, 2010 provides as follows:

> "1 (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."

11. These provisions have been interpreted by Courts on various occasions and in various decisions. In Republic v Public Procurement Administrative Review Board & 2 others [2018] eKLR it was held that:

> "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."

12. In Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] eKLR J.M. Mativo J (as he then was) culled out the following principles from a number of authorities:

   i. A court can review its decision on either of the grounds enumerated in Order 45 Rule 1 and not otherwise.

ii. The expression "any other sufficient reason" appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds.

iii. 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.

iv. An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

v. 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.

vi. 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.

vii. 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.

viii. 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. In the present case the petitioner has not been able to point out any error apparent on the face of the record.

ix. 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.

x. 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."

13. Applying these principles to this case, it is clear that while the Court has discretion under Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules to review or set aside its orders, such discretion must be exercised judiciously and only where sufficient cause is shown.

14. This Court, in its ruling of 26th May 2025, although dismissing the applicant's application partly on account of undue delay, also observed that no evidence had been adduced confirming whether or not the subject matter of the proceedings was still alive.

15. The Court further found that the injunctive relief sought amounted to interference with the internal governance of Githunguri Constituency Ranching Company Limited without any proof that the current directors were irregularly elected.

16 The Court further held that the applicant had failed to satisfy the threshold for granting of an injunction as encapsulated in Giella v Cassman Brown & Co. Ltd [1973] EA 358, the applicant having failed to demonstrate either a prima facie case, or irreparable harm, or that the balance of convenience tilted in his favour. Accordingly, the dismissal of the application was not founded merely on delay, but also on the absence of merit in the substantive issues raised in that application.

17. Worth noting is that the ruling of Hon. Justice Ngaah was delivered on 16th August 2024 long before this Court rendered its decision on 26th May 2025. The Applicant was therefore aware of that ruling at the time he prosecuted the earlier application dated 30th September, 2024 but failed to bring to the attention of the Court the reasons for delay. He cannot now rely on it as a "new and important matter" within the meaning of Order 45 Rule 1 of the Civil Procedure Rules, since it was within his knowledge and could, with due diligence, have been produced earlier.

18. It follows therefore that even if the element of delay were to be excused, the Applicant has not presented any new evidence, error apparent on the record, or sufficient reason to justify review of the application for injunction, in view of the substantive orders made by this court on the merits of that application. The application in substance seeks a rehearing of issues already adjudicated, which falls outside the narrow ambit of review contemplated under Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules.

19. In the result, this Court finds that the applicant has not satisfied any of the grounds for review under Section 80 of the *Civil Procedure Act*, and Order 45 Rule 1 of the Civil Procedure Rules. The matters raised neither constitute new and important evidence nor disclose any error apparent on the face of the record. This Court is persuaded that the application is an impermissible attempt to reopen issues that were conclusively determined on their merits.

20. Accordingly, the Notice of Motion dated 13th June 2025 is found to be devoid of merit and is hereby dismissed.

21. As the respondent did not participate in the application, I make no orders as to costs.

22. This file is closed.

23. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF OCTOBER, 2025

R.E. ABURILI

JUDGE