

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELCC NO. E012 OF 2023 (OS)

**ALFRED
AYORA.....PLAINTIFF/APPLICANT**

JUMA

VERSUS

**TERESIA
DEFENDANT/RESPONDENT**

ADHIAMBO

ODHIAMBO.....1ST

**CHIEF
DEFENDANT/RESPONDENT**

LAND

REGISTRAR.....2ND

RULING

1. Before me is the notice of motion dated 9th June, 2025 filed by the plaintiff/applicant, and it is expressed to be brought under **Sections 1A, 1B, 3A and 80** of the **Civil Procedure Rules, Order 45 Rules 1 and 2** and **Order 50 Rule 1** of the **Civil Procedure Rules** and **Articles 48, 50 and 159** of the **Constitution** seeking the following orders:-

1. *Spent.*

2. *Spent.*

3. *An order be and is hereby issued reviewing, setting aside and or varying the order issued by the court on 24th April, 2025 sustaining the objection to the adoption, production and reliance on the applicant's response and defence to the 1st respondent's amended*

replying affidavit and counter claim sworn on 23rd April, 2025.

- 4. That this honourable court be pleased to deem the applicant's response and defence to the 1st respondent's amended replying affidavit and counterclaim sworn on 23rd April, 2025 and filed herein as duly filed, served and properly on record.***
 - 5. An order be and is hereby issued allowing the adoption, production and reliance on the applicant's response and defence to the 1st respondent's amended replying affidavit and counterclaim sworn on 23rd April, 2025.***
 - 6. The costs of this application abide the outcome of the suit.***
- 2.** The application is premised on the grounds on its face. It is further supported by the affidavit of the plaintiff/applicant sworn on even date. The plaintiff/applicant deposed that on 13th June 2024, the court gave directions as to the filing and service of pleadings. Further, that he appointed his current advocate on record on 19th February, 2025 who discovered that even though his former advocate had prepared a response to the defence and counter claim, the same had not been filed.

3. The plaintiff/applicant deposed that he is aware that the adoption and production of his response and the counterclaim was objected during the trial on 24th April, 2025 on misleading allegations that the same had not been served, and that the same has exposed him to great prejudice, as it constitutes his defence to the 1st respondent's counterclaim. He stated that an irregularity in filing and service was not intentional and not prejudicial to the defendants/respondents.
4. The application was opposed vide the replying affidavit of the 1st defendant/respondent sworn on 14th July, 2025. The 1st defendant/respondent deposed that when the matter came up for hearing on 19th February, 2025 the counsel on record was given two months to study his client's file and the matter was thereafter fixed for hearing on 23rd and 24th April, 2025. She deposed that on 24th April, 2025, the learned counsel for the plaintiff/applicant filed a response to her replying affidavit and a counterclaim which was expunged from the court records. She deposed that the same was served via email at 9.43 am on 24th April, 2025 while the parties were in court ready for the hearing.
5. The 1st defendant/respondent deposed that it is not open to the plaintiff/applicant to fail to comply with the court's directions

issued on 13th June, 2024 and insist on complying with the same on 24th April, 2025. Further, that this court has no jurisdiction to revisit a matter which it has rendered a decision having expunged from the record the said reply to defence and counterclaim. She further deposed that although the law provides a window where a decision maker may review its own decision, the present circumstances do not meet the threshold prescribed by the law of procedure and the substantive law. In conclusion, the 1st defendant/respondent deposed that the application should be dismissed with costs.

6. The application was canvassed by way of written submissions. The plaintiff/respondent filed his written submissions dated 11th July, 2025 where he raised one issue for determination which is ***whether the plaintiff has satisfied the threshold for the orders sought.***
7. On this issue, the plaintiff/ applicant submitted that there exists sufficient cause pursuant to **Order 45 Rule 3** of the **Civil Procedure Rules** to grant the orders he seeks. He relied on the case of **Safaricom Limited v Josenga Company Limited & 4 others [2021] eKLR.**

8. While further relying on the cases of **Belinda Murai & 9 others v Amos Wainaina [1979] eKLR**, and **Philip Kiptoo Chemwolo & another v Augustine Kubende [1986] KECA 87 (KLR)**, the plaintiff/applicant submitted that there will be serious prejudice on his part if he is not allowed to file a response to the defence and counterclaim, and that under **Article 159 (2)(d) of the Constitution**, the court is enjoined to deliver justice without undue regard to technicalities.
9. The 1st defendant/respondent filed her written submissions dated 25th July, 2025 where she raised two issues for determination as listed below:-
- a. ***Whether the plaintiff has demonstrated sufficient case for review of this honourable court's order.***
 - b. ***Whether the plaintiff has satisfied the threshold for re-opening of his case.***
10. On the first issue, the 1st defendant/respondent submitted that the moment the court rendered its decision rejecting the reply to defence and counterclaim, that issue became *res judicata*, and that if the plaintiff/applicant was dissatisfied with the order, he would have appealed the same to a higher court. The 1st defendant/respondent relied on the cases of **Pop-in (Kenya) Ltd & 3 Others v Habib Bank AG Zurich (1990) KLR 609, Y.**

Jeruto & Company Advocates v Shadrack G Kimotho (Miscellaneous Application E003 of 2021) [2024] KEHC 4695 (KLR), and Telkom Kenya Limited v John Ochanda (suing on his own behalf and on behalf of 996 former employees of Telkom Kenya limited) [2014] eKLR.

11. The 1st defendant/respondent further deposed that pursuant to **Order 45 Rule 1** of the **Civil Procedure Rules**, the plaintiff/applicant has not disclosed any new or important matter that was not within his knowledge prior to 24th April, 2025, and that no error apparent on the face of record has been demonstrated. To further buttress on this issue, the 1st defendant/respondent relied on the cases of **Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] KEHC 6379 (KLR)**, **BML v WM [2020] eKLR** and **Attorney General v Law Society of Kenya & Another [2013] KECA 372 (KLR)**.
12. While relying on the cases of **Paul Francis Njoroge v Annah Nduta Njoroge & 5 others [2020] KEELC 3034 (KLR)**, and **Ochieno v Nganya (Miscellaneous Application 38 of 2022) [2023] KEELC 208848 (KLR) (19 October 2023) (Ruling)**, the 1st defendant/respondent submitted that sufficient case must be

rational, plausible, logical, convincing, reasonable and truthful. Further, that it should not be an explanation that leaves doubt in the judge's mind.

13. On the second issue, the 1st defendant/respondent submitted that allowing the application has the effect of re-opening the case which was closed on 15th July, 2025 and that the said trial cannot be re-opened unless there is crucial evidence that would have a bearing on the determination of the case. She submitted that the expeditious disposal of the instant case will be frustrated, and that in any case, she will be prejudiced as the plaintiff/applicant has been enjoying injunctive orders since 18th April, 2023. She relied on the case of **Ladd v Marshall (1954) 3 All ER 745**.
14. I have considered the application, the replying affidavit and the written submissions filed by the respective parties. I am of the view that the issue for determination is *whether this court should review its orders made on 24th April, 2025*.
15. On 24th April, 2025 and while the matter was ready for hearing, the plaintiff/applicant informed the court through counsel that he had filed a reply to the 1st defendant's/respondent's replying affidavit and a reply to the counterclaim. The 1st defendant/

respondent challenged the filing of these pleadings, and termed them as unprocedural and having been filed without the leave of the court. Upon considering the rival submissions, this court expunged from the records the said reply to the amended replying affidavit and the reply to the counterclaim.

16. Once again, the plaintiff/applicant being dissatisfied with the said order, filed a formal application which is the subject of this ruling.

17. **Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules** 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.”

[Order 45, rule 1.] Application for review of decree or order.

“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.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review"

18. From the above provisions, it is clear that while **Section 80 of the Civil Procedure Act** grants the court the statutory power to make orders for review, **Order 45** sets out the procedure and scope of review by hinging review to discovery of new and important matters or evidence, mistake or error on the face of the record and any other sufficient reason.

19. In the case of **Otieno, Ragot & Company Advocates v National Bank of Kenya Limited [2020] eKLR**, the Court of Appeal held that:-

“The main grounds for review are therefore; discovery of new and important matter or evidence, mistake or error apparent on the face of the record; or for any other sufficient reason and most importantly, the application has to be made without unreasonable delay.”

20. The plaintiff/applicant argued that the former advocate had prepared the impugned pleadings but failed to file and serve the same. On this ground, he argued that there is sufficient cause to warrant a review of the court’s orders as he will be greatly prejudiced if the documents are not deemed as properly filed and constitute part of his pleadings. On the other hand, the 1st defendant/respondent maintained that the plaintiff/applicant’s

advocate was granted sufficient time to study his client's file, and she will suffer prejudice if the plaintiff's/applicant's case is re-opened to allow for the filing of his pleadings.

21. Indeed, the court has the jurisdiction to review, and set aside or vary its orders pursuant to **Order 45** of the **Civil Procedure Rules**. In exercising its discretion, the court has to be satisfied that sufficient reason has been shown to enable review of its orders. In this case, I do note that the plaintiff/applicant's counsel on record sought time to familiarize himself with his client's case on 19th January, 2025 when the matter came up for hearing. The hearing of this matter was then slated for 23rd and 24th April, 2025. I do agree with the 1st defendant/respondent that the counsel had sufficient time to review his client's pleadings and appraise himself of any pending issues. I find it quite reckless for the plaintiff/applicant on the date of the hearing to file the impugned pleadings on grounds that the same had been mistakenly left out. It is also improper for the plaintiff/applicant to continue to rely on the supposed mistake of a former counsel yet there is no record that the former counsel had prepared the same pleadings and failed to file and serve the same.

22. I find no sufficient reason to exercise discretion and review the orders made on 24th April, 2025. The notice of motion dated 9th June, 2025 lacks merit and it is hereby dismissed. Costs in the cause.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 11TH DAY OF NOVEMBER, 2025.**

**HON. MBOGO C.G.
JUDGE
11/11/2025.**

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Ajak Jok for the 1st Defendant/Respondent

Mr. Allan Kamau for the 2nd Defendant /Respondent

Mr. Keaton for the Plaintiff/Applicant