



**Ngao v Third Engineering Bureau of China City Construction Company & another
(Land Case E053 of 2023) [2025] KEELC 8427 (KLR) (4 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8427 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
LAND CASE E053 OF 2023
YM ANGIMA, J
DECEMBER 4, 2025**

BETWEEN

NGAO MWADINGO NGAO PLAINTIFF

AND

**THE THIRD ENGINEERING BUREAU OF CHINA CITY CONSTRUCTION
COMPANY 1ST DEFENDANT**

KENYA NATIONAL HIGHWAYS AUTHORITY 2ND DEFENDANT

RULING

1. By a notice of motion 24.09.2025 expressed to be brought pursuant to Article 159 (2) (d) and 48 of *the Constitution* of Kenya, Sections 1A, 1B, and 3A of the *Civil Procedure Act* (Cap. 21), Order 45, Order 51 Rule 1 of the Civil Procedure Rules and all other enabling provisions of the law, the plaintiff sought a review the court’s ruling dated 31.07.2025 which directed the plaintiff to pay the 2nd defendant travel costs of Kshs 20,000/=.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by Ngao Mwadingo Ngao on 24.09.2025. He stated that he was bereaved on the morning of 03.07.2025, prompting his counsel to seek an adjournment on 03.07.2025. It was contended that the court allowed the adjournment and granted the defendant costs of Kshs 20,000. The plaintiff argued that the court awarded the defendant costs without granting him an opportunity to be heard on the same. He argued that the adjournment was made in good faith and the court should not have slapped him with costs. The court was urged to review the award and order that the costs be in the cause.
3. The record shows that the respondents were granted leave to file and serve their responses to the application within 14 days. The court further directed the plaintiff to serve submissions within 14 days upon service of the responses. In addition, the defendants were to file and serve their submission within



- 14 days upon the lapse of the plaintiff's period. There is no indication on record of the respondents having filed any responses to the application.
4. The court has perused the notice of motion dated 24.09.2025 and the material on record and is of the view that the key issue is whether the court should review the orders made on 03.07.2025.
 5. The power of the court to review an order is found in Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules. Section 80 of the Act provides that,
 - 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.
 6. Order 45 Rule 1 of the Civil Procedure Rules provides for review on the following grounds:
 - i. 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,
 - ii. on account of some mistake or error apparent on the face of the record,
 - iii. or for any other sufficient reason,
 - iv. without unreasonable delay.
 7. The plaintiff herein seeks a review of the order of the court made on 03.07.2025 whereby he was ordered to pay the 2nd defendant travel costs of Kshs 20,000/= for occasioning the adjournment. The plaintiff submitted that he was not afforded a chance to respond to the issue of costs and that he was bereaved which grounds were sufficient reasons to warrant the court to review the orders on the ground of 'sufficient reason'.
 8. Based on the record, the plaintiff was represented by counsel on the material day who informed the court he was not ready to proceed as the plaintiff was bereaved. Counsel for the 2nd defendant informed the court that her client was physically present in court and sought travel costs of Kshs 40,000/=. The court granted the adjournment and awarded the 2nd defendant Kshs 20,000/= as costs. It is clear from the proceedings that the plaintiff was represented by his counsel who addressed the court and sought an adjournment. He cannot be heard to say that he was not accorded an opportunity of being heard on the issue of costs.
 9. Moreover, it is clear from the record that the said order was made on 03.07.2025 while the instant application was filed on 24.09.2025. Order 45 Rule 1 of the Civil Procedure Rules is clear that an application for review has to be brought without unreasonable delay. The plaintiff has not provided any explanation for the delay of nearly three months in filing the application. The court takes the view that such an unexplained delay would disentitle the plaintiff to the order of review sought.
 10. Section 27 of the *Civil Procedure Act* grants the court wide discretion in the award of costs which ordinarily follow the event unless the Court, for good reasons, orders otherwise. For that reason, the court exercised its discretion and made the order as it thought fit. Such a discretionary order can only be reviewed where the aggrieved party clearly demonstrates the grounds for review set out in Order 45 Rule 1 of the Civil Procedure Rules.



11. The upshot of the foregoing is that the court finds and holds that the plaintiff has failed to satisfy the requirements set out in Order 45 Rule 1 of the Rules. As a consequence, the plaintiff's notice of motion dated 24.04.2025 is hereby dismissed with costs to the 2nd defendant assessed at Kshs 15,000/= only.

Orders accordingly.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 4TH DECEMBER 2025.

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Y. M. ANGIMA

JUDGE

In the presence of:

Gillian - Court assistant

No appearance for the plaintiff

No appearance for the defendant

Ms. Bii for 2nd defendant

