



**Ouma v Ouma (Civil Appeal E059 of 2024)
[2025] KEHC 18953 (KLR) (22 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18953 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL APPEAL E059 OF 2024
WM MUSYOKA, J
DECEMBER 22, 2025**

BETWEEN

BONIFACE OUMA APPELLANT

AND

EDWARD OUMA RESPONDENT

(Appeal from the orders made in the ruling of Hon. Kassim Akida, Resident Magistrate, RM, delivered on 31st August 2024, in Busia MCCC No. E272 of 2023)

JUDGMENT

1. This appeal arises from a ruling that was delivered by the trial court on 31st August 2024, according to the Memorandum of Appeal, dated 11st November 2024, where the trial court delivered 2 separate rulings, on applications, dated 29th May 2024 and 19th July 2024. It would appear, from the memorandum of appeal, that the appeal arises from the ruling on the application, dated 29th May 2024.
2. The suit, at the trial court, was by the respondent herein, against the appellant. It sought compensation, founded on the tort of assault and battery, following a beating of the respondent by the appellant. The appellant was subsequently prosecuted, and convicted on 30th March 2022, in Busia CMCCRC No. 2823 of 2021. The appellant resisted the claim, vide a defence he filed, denying everything pleaded in the plaint, raising arguments about res judicata, lack of jurisdiction and the claim being statutorily time-barred.
3. The trial court delivered a ruling on 29th May 2024, where it struck out the suit for being time-barred. It was noted that the cause of action arose on 13th May 2017, when the assault and battery happened, yet the civil suit, for compensation, was not filed until 6th October 2023, some 5 years after the cause of action accrued. The court relied on section 4(2) of the *Limitation of Actions Act*, Cap 22, Laws of Kenya, which provides that an action, founded on tort, may not be brought after the end of 3 years, from the date the cause of action accrued.



4. The respondent sought review of the orders of 29th May 2024, in an application, dated 8th August 2024, on the basis that he had obtained leave to file the claim out of time. The order for extension of time had been made on 14th August 2023, but that that order had not been placed before the trial court. A copy of the said order, of 14th August 2023, was exhibited. It indicated that leave had been granted in Busia CMC Misc. Applica. No. E029 of 2023, to file the claim out of time. In the ruling of 31st October 2024, the trial court was persuaded that there was ground for review of the orders of 29th May 2024, for the suit was initiated with leave of court, and that the dismissal was only on account of the omission to bring that fact to the attention of the court.
5. The appellant was aggrieved, hence the instant appeal. The principal ground is that the case for review did not meet the test or threshold set out in section 80 of the *Civil Procedure Act*, Cap 21, Laws of Kenya, and order 45 of the Civil Procedure Rules.
6. Directions were given, on 12th May 2025, for canvassing of the appeal, by way of written submissions. Both sides complied, by filing their respective written submissions, which I have read and noted the arguments made.
7. There are 2 principal grounds for review of court orders, under section 80 of the *Civil Procedure Act* and order 45 of the Civil Procedure Rules. These are error on the face of the record and discovery of new material. The case before the trial court could not possibly fall under either of these 2. Error on the face of the record is about an error made by the court, in its ruling or judgement. That was not the case before the trial court. The issue was not that the trial court had made an error, in its ruling of 29th May 2024, which the respondent was seeking to have corrected. It was not a matter of discovery of new evidence either. The order, granting leave to file suit out of time, was made on 14th August 2023, months before the suit at the trial court was filed on 6th October 2023. That was material that the respondent could not, possibly, claim not to have had in his possession, as at 29th May 2024, when the order dismissing his suit was made.
8. Section 80 of the *Civil Procedure Act* and order 45 of the Civil Procedure Rules, though, carry a third ground, which is not specific, unlike the other 2, but omnibus. It provides for review on the basis of any other sufficient reason. It has been ruled that that other sufficient reason, envisaged under the omnibus or general ground, need not be analogous to the other 2 grounds, of error on the face of the court record or discovery of new matter. It can be any other ground or reason, not related to the other 2, but strong enough for the court to be persuaded to exercise discretion to review its earlier orders.
9. In this case, it was argued that the suit was barred by statute, on the ground that it was filed outside the 3 years allowed in law, however, leave had been granted, under the limitation of actions law, to file the suit outside that period, hence the suit was good. Evidence was placed on record to support that.
10. Of course, where a suit is filed outside limitation of time, but with leave, the plaintiff should always plead, in its papers, that the suit was filed with leave, and the order granting leave ought to be amongst the documents, in the list of documents, that should be lodged in the record. However, the omission to do so would not be fatal. The validity of the suit would not be founded on the fact that disclosure is made of the leave order, for validity does not reside or emanate from there, but from the order itself. The order can be brought forth at any time, when the issue arises.
11. The issue arose, when the preliminary objection was raised, and argued. That was the appropriate time to present the leave order. It surprises that the Advocate, who appeared for the respondent, at that time, chose to present spurious arguments, instead of merely placing on record the leave order, to demonstrate that the suit was filed with leave of court. That would have brought the matter to a close, and would have obviated the need to file the application, dated 8th August 2024.



12. Whatever the case, the failure, to present the leave order to the trial court, before the ruling of 29th May 2024, was not something that could be taken against the respondent. The fact remained that he had filed the suit properly, after he had obtained leave. The fact that he did not argue that, when reacting to the preliminary objection, should not be taken against him. Presenting the leave order, thereafter, was a sufficient reason, upon which review could be premised. It aligned with Article 159(2) of *the Constitution* and sections 1A and 1B of the *Civil Procedure Act*, on focusing on doing substantive justice, instead of dwelling on technicalities of procedure, despite blunders or tardiness by the parties or their legal advisers.
13. I am not persuaded that the trial court did not exercise discretion properly. It handled what was placed before it, based on the facts deponed in support of the application. It properly handled the application, based on those facts, and arrived at the correct findings and conclusion. There is no merit in the appeal herein, and I hereby dismiss the same, with costs. Let the trial court records be returned to the trial court, while the instant file shall be closed. Orders accordingly.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 22ND DAY OF DECEMBER 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Opwapo, instructed by Opwapo & Company, Advocates for the appellant.

Mr. Ouma, instructed by BM Ouma & Company, Advocates for the respondent.

