

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**JUDICIAL REVIEW DIVISION**

**JUDICIAL REVIEW APPLICATION NO. E279 OF 2025**

**INSTITUTION OF SURVEYORS OF KENYA... EX-PARTE  
APPLICANT**

**-VERSUS-**

**THE CABINET SECRETARY, THE MINISTRY OF NATIONAL  
TREASURY & ECONOMIC PLANNING ..... 1<sup>ST</sup>  
RESPONDENT**

**THE MINISTRY OF NATIONAL TREASURY & ECONOMIC  
PLANNING ..... 2<sup>ND</sup>  
RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL ... .....3<sup>RD</sup>  
RESPONDENT**

**RULING**

1. For determination before this Court is a Notice of Motion dated 8<sup>th</sup> January 2026 brought under Section 1, 1A, 3, 3A of the Civil Procedure Act, Order 1 Rules 3, Order 45 Rule 1, Order 51 of the Civil Procedure Rules 2010, and all other enabling provisions of the law.

2. The *ex-parte* Applicant seeks a numerous order as follows:

***(1) Spent***

***(2) THAT this Honourable Court be pleased to issue an Order setting aside and/or varying the whole judgment delivered on 30<sup>th</sup> December 2025 or any other consequential orders therefor, pending the inter-parties hearing of this Application.***

- (3) THAT in the alternative, this Honourable Court be pleased to review its judgment delivered on 30<sup>th</sup> December 2025 and make such further Orders that are just and equitable in the interests of justice.**
- (4) THAT this Honourable Court be pleased to issue an Order staying the issuance, adoption and/or publication of the draft of final Government Assets Valuation Policy Framework for the Public Sector 2025 (hereinafter referred to as “the draft Policy”), pending the hearing and determination of this Application.**
- (5) THAT this honourable Court be pleased to issue an Order staying the issuance, adoption and/or publication of the draft or final Government Assets Valuation Policy Framework for the Public Sector 2025, pending the hearing and determination of the substantive Notice of Motion.**
- (6) THAT upon setting aside the said judgment, this Honourable Court be pleased to grant leave to the Applicant to file the substantive Notice of Motion for Judicial Review Orders in terms of the annexed re-drafted Substantive Notice of Motion and the same be deemed as duly filed upon payment of the requisite fees.**

**(7) THAT this Honourable Court be pleased to extend the time for filing the substantive Notice of Motion for Judicial Review Orders.**

**(8) THAT the Court do make any further Orders in the interests of justice.**

**(9) THAT costs of this Application be provided for.**

3. The Notice of motion is predicated on the grounds on the face thereof and supported by the Affidavit sworn by Eric Nyadimo, the president of the *ex-parte* Applicant, sworn on 8th January 2026.
4. The applicant's contest is that this Court dismissed the *ex-parte* Applicant's substantive Notice of Motion dated 2<sup>nd</sup> September 2025 on the basis of a technicality being that the application was repetitive of the prayers sought in the chamber summons application for leave to apply dated 2<sup>nd</sup> September 2025 and that as a result, the applicant was denied the opportunity to be heard or having its case determined on its merits.
5. It is deposed that the dismissed Notice of Motion nuances on the infringement of the public participation principles by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents on the Draft Government Assets Valuation Policy Framework for the Public Sector 2025, where the respondents failed to provide exact venues for the public participation exercise which commenced on 1<sup>st</sup> September 2025 and ended on 5<sup>th</sup> September 2025. That the said Policy

Framework is set to be adopted without the public and stakeholders' input, contrary to the law.

6. The *ex-parte* Applicant contends that the repetitive nature of the prayers sought in the substantive Notice of Motion Applications was occasioned by the inadvertent mistake/error of counsel which should not be visited upon it and that the subsequent dismissal has denied it the right to be heard on the merits of the case contrary to the principles of natural justice. It is averred that they have re-drafted the substantive Notice of Motion with distinct prayers for Judicial Review and that there is an arguable case with high chances of success.
7. Another ground of the Application is that **Articles 47 and 50 of the Constitution** as read together with **Sections 4 and 5 of the Fair Administrative Action Act, 2015** guarantee fundamental rights and freedoms on fair administrative action and the right to be heard, which should not be arbitrarily taken away at the stroke of a pen, where sufficient cause has been shown. It is the applicant's contention that it would be unjust and a miscarriage of justice to deny the *ex-parte* Applicant a chance to be heard on the matter where it has already filed the present Application to set aside the judgment and has consistently attended court in the past to advance its cause, before its dismissal.
8. It is the applicant's further contention that the *ex-parte* Applicant has objections to the Policy as per its Memorandum dated 27<sup>th</sup> August 2025

and that unless the Court grants the prayers sought, the said Policy will be adopted for the entire public sector without the input of the public and its stakeholders. the applicant asserts that the present Application has been made without undue delay, that it is in the best interests of justice that the orders sought are granted to ensure a fair hearing and that unless the orders are granted, the *ex-parte* Applicant stands to suffer grave injustice and substantial loss.

9. In opposing the Application, the 3<sup>rd</sup> Respondent filed Grounds of Opposition dated 13<sup>th</sup> January 2026. It contends that that the Application is incompetent, misconceived and an abuse of the court process as it seeks to challenge a judgment that is sound in law and fact, which correctly identified a fatal, substantive defect in the Applicant's pleadings.
10. The 3<sup>rd</sup> Respondent asserts that the judgment is proper and lawful and that this Court rightfully concluded that there was no substantive motion before it to be adjudicated upon, thereby warranting a dismissal. That the defect in this case was not merely technical but substantial in nature and that failure by the *ex-parte* Applicant to bring distinct prayers for Judicial Review as required by **Order 53 Rule 3 (1)** after the grant of leave, constituted a fundamental failure to initiate a proper cause of action.
11. It is the 3<sup>rd</sup> respondent's position that this error went to the root of the Application and was not curable under **Article 159 (2) (d) of the Constitution** and further, that parties were bound by their pleadings as

correctly stated by the Court and was held in the cases of *Associates Electrical Industries Ltd. vs. William Otieno (2004) eKLR*; *Independent Electoral and Boundaries Commission & Another vs. Stephen Mutinda Mule & 3 Others (2014) eKLR*; and *Daniel Otieno Migore vs. South Nyanza Sugar Co. Ltd (2018) eKLR*.

12. The 3<sup>rd</sup> Respondent further contends that the *ex-parte* Applicant's right to fair hearing under **Articles 47 and 50 of the Constitution** was not violated and that the Court's dismissal was not a denial of a hearing but a correct determination that the filed application was a legal nullity. They contended that if there was any remedy available to the *ex-parte* Applicant for its advocate's alleged error, the same arose in a different forum and certainly not in the manner in which *ex-parte* Applicant was asking this Court to do by setting aside a correct judgment.
13. Further contention by the 3<sup>rd</sup> respondent is that the Application does not meet the threshold for setting aside or reviewing a judgment under Order 45 of the Civil Procedure Rules and that the issues regarding public participation and alleged contraventions of the Valuers Act raised in the Applicant's Supporting Affidavit and grounds are irrelevant to the question of setting aside the Judgment because the Judgment made no determination on these merits, and that therefore, the applicant cannot now invoke those issues of merit to cure a fundamental procedural lapse in the Applicant's earlier case.

14. It is the 3<sup>rd</sup> respondent's firm position that granting the orders sought would undermine the integrity of the Judicial Review procedure and set a harmful precedent in allowing parties to disregard procedural rules with impunity under the guise of an advocate's error, thereby encouraging indolence and procedural carelessness. The 3<sup>rd</sup> Respondent asserts that the Application has not been brought in good faith but is a calculated attempt to delay the implementation of the draft Policy prayed that the application should be dismissed with costs to the Respondents for want of merit.
15. The Application was canvassed by both written and oral submissions.

**The ex-parte Applicant's Submissions**

16. The *ex-parte* Applicant filed written submissions and highlighted the same in Court on 10<sup>th</sup> February 2026, reiterating the written submissions. In her oral submissions, Ms. Wechuli, Counsel for the *ex-parte* Applicant argued that they were seeking the setting aside or varying of the judgment of 30/12/2025 and a conservatory order staying the adoption and publication of the draft Policy together with leave to file a substantive motion because they inadvertently filed repetitive orders for leave, a mistake that was not deliberate. She stated that the error was on the part of counsel and urged the Court to allow the *ex-parte* Applicant to be heard in accordance with **Article 47 of the Constitution** by reviewing its Judgement under **Order 45 of the Civil Procedure Rules**. She submitted that the applicant's counsel

had since redrafted the substantive notice of motion for prosecution with substantive prayers, annexed to this Application.

17. It was submitted, citing ***Order 45 of the Civil Procedure Rules, 2010*** and highlighting the instances when a court can review its orders, emphasising that the cardinal rule of natural justice is that a party should not be condemned unheard on the merits of their case. Further submission was that ***Article 47 of the Constitution of Kenya 2010*** as read together with ***Section 4 of the Fair Administrative Action Act*** gives the Applicant the Right to be heard before they are condemned but that this right is not an absolute right and is only qualified and dependent on the prosecuting parties' ability and willingness to prosecute their suit in accordance with established procedures as per the Civil Procedure Rules and directions issued by the trial court from time to time. Counsel relied on the case of ***Mbaki & 2 Others vs. Macharia & Another (2005) 2 EA 206, at page 210; Mureithi Charles & Another v. Jacob Atina Nyagesuka [2022] KECH 1805 (KLR); and Mukenyay vs. Evansa Pkemei Lomanduny & Another (2022) eKLR.***
18. Counsel further submits that the *ex-parte* Applicant has been eager to prosecute the matter and that by denying it the right to be heard based on mistake by counsel to follow procedure, the same would result in a miscarriage of justice. Reliance was placed on the cases of ***Republic v Kenyatta University Ex parte Martha Waihuini Ndungu [2019] eKLR;***

*Raila Odinga & 5 Others vs. Independent Electoral and Boundaries Commission & 3 others [2013] eKLR, Petition No. 5 of 2013 SC*; the South African case of *Republic of South Africa and Others vs. South African Rugby Football Union and Others (CCT16/98) 2000 (1) SA 1*; the Supreme Court of Canada in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817; and *Judicial Service Commission v Mbalu Mutava & another [2015] KECA 741 (KLR)*, for the proposition that courts of law, in advancing the rules of procedure must ensure fairness and natural justice by considering all relevant circumstances and determine the best course, particularly where a person is likely to be adversely affected by the intended decision.

19. On the issue of conservatory orders, it was submitted that **Article 23 of the Constitution of Kenya** gives this Court the power to grant Conservatory Orders, and to preserve the subject matter of the suit and that in the present case, there is imminent threat by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents of issuing, adopting and publishing the draft of final Government Assets Valuation Policy Framework for the Public Sector 2025. Thus, allowing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to proceed with the adoption of the policy will occasion the members of the *ex-parte* Applicant irreparable harm as they are likely to be adversely affected by the administrative action of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. It was their submission that no prejudice would be occasioned to the Respondents if the stay orders were granted.

20. On the issue of extending time to file the substantive suit, Counsel cites **Rule 6 of the Fair Administrative Action Rules (2024)** and **Order 53 Rule 3 (1) of the Civil procedure Rules 2010** which give statutory timelines for filing alongside the case of **Elizabeth Njeri Hinga & another v National Environmental Management Authority & 2 others [2012] eKLR**; and the Supreme Court cases of **Mombasa County Government vs. Kenya Ferry Services & Anor (2019) eKLR** and **County Executive of Kisumu vs County Government of Kisumu and 8 others Civil Application No. 3 of 2016** where the courts gave guidelines to be considered by the courts in exercising their discretion to extend statutory timelines for filing matters.
21. It is submitted that the Court should allow *ex-parte* Applicant to file the substantive application out of time since it has always been eager to prosecute its case.
22. In support of the *ex-parte* Applicant, Mr. Okonjo stated in Court that he relied on **Article 47 of the Constitution** and sought mercy and leniency of the Court because the *ex-parte* Applicant stands to suffer irreparable harm since the profession is their source of livelihood. He adds that the case is a public interest matter calling for the Court's leniency.

### **The Respondent's Oral Submissions**

23. Ms. Wamuyu submitted on behalf of the Respondents arguing that the judgment delivered by the Court was grounded on the principle that parties

are bound by their pleadings and that the Application was legally non-existent since the *ex-parte* Applicant replicated prayers for leave and therefore, there were no orders capable of being granted. She submitted that the defect now pleaded by the *ex-parte* Applicant was not a technical error but a foundational error which was a legal nullity incapable of remedy by this Court. She stated that **Article 159 (2)(d) of the Constitution** was properly applied by this Court in its decision declining to grant the orders sought.

24. Further, Ms. Wamuyu submitted that parties are bound by their pleadings and since there was no substance of the case, the request for review under Order 45 of the Civil Procedure Rules is not available. It was her submission that there is no error in the judgment sought to be reviewed since no new evidence is raised.
25. Counsel vehemently opposed the granting of conservatory orders and argued that advocates' errors in drafting are not a reason for the court to set aside its judgment; that a dismissal is a final order and in the instance case, the *ex-parte* Applicant was undermining the Judicial Review process because there was no technicality upon which the dismissal was grounded.

### **Rejoinder**

26. In a rejoinder, Ms. Wachuli appreciated that while this Court correctly held that there were no substantive orders sought, the applicant's counsel never

realized the error during the hearing and reiterated that no party should be condemned unheard especially the *ex-parte* Applicants who have been keen and willing to prosecute their case.

27. Mr. Okonjo stated that the matter does not fall within **Section 7 of the Civil Procedure Act** on res-judicata and affirmed the Court's jurisdiction to grant the *ex-parte* Applicant a chance to be heard.

### **Analysis and Determination**

28. Having considered the application and the response thereto coupled with the written and oral submissions, the main issue for my determination is ***whether the orders sought by the applicant are available.***
29. The crux of this Application is that the *ex-parte* Applicant seeks a review of this Court's judgment dated 30<sup>th</sup> December 2025 in which this Court found that it could not consider the substantive issues and grant JR orders where the prayers sought were a replication of the prayers for leave in JR Misc. Application No. E272 of 2025. Counsel for the *ex-parte* Applicant has moved this Court on Review under **Order 45** seeking to have the said judgment reviewed and set aside. They also pray that this court grants them leave to file the substantive notice of motion afresh and deem the draft application containing substantive orders to be deemed to be duly filed upon payment of the requisite court fees and or extension of time for filing of the substantive notice of motion. I note that the effect of this prayer if

granted, will be to re-open the matter which the *ex-parte* Applicant argues should be allowed in order to dispose of their grievances on merit.

30. The power to review is donated to the Court by virtue of **Section 80 of the Civil Procedure Act** which postulates as follows:

***80. 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 judgement to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.***

31. The procedural rules for review are found in **Order 45 Rule 1 of the Civil Procedure Rules, 2010** as follows: -

***Order 45 Rule 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 review of judgement to the court which passed the decree or made the order without unreasonable delay.*

32. Thus, the parameters which can be culled from the above legal framework for granting review are: -

- (i) Error or mistake apparent on the face of the record;*
- (ii) Discovery of new material evidence which was not within the knowledge of the parties; or*
- (iii) For any other sufficient reasons; and*
- (iv) Such an application must be made timeously.*

33. In **Tokesi Mambili and others vs. Simion Litsanga (2004) eKLR**, the court explained the parameters of review and held that:

*“i. In order to obtain a review an applicant has to show to the satisfaction of the court that there has been discovery of new and important matter or evidence which was not within his knowledge or could not be produced at the time when the order to be reviewed was*

*made. An applicant may have to show that there was a mistake or error apparent on the face of the record or for any other sufficient reason.*

*ii. Where the application is based on sufficient reason it is for the Court to exercise its discretion.”*

34. In **Evan Bwire vs. Andrew Nginda Civil Appeal No. 103 of 2000, Kisumu; {2000} LLR 8340** the court held that:

*“An application for review will only be allowed on very strong grounds particularly if its effect will amount to re-opening the application or case a fresh.”*

35. Similarly, in **Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] KEHC 6379 (KLR)** at paragraph 30, Mativo J. (*as he then was*) outlined the principles to be considered in granting review and held thus: -

*“30. The principles which can be culled out from the above noted authorities are:-*

*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.”*

36. In the present case, the *ex-parte* Applicant decries the fact that their legal counsel was responsible for the mistake committed in replicating the orders sought in the Notice of Motion Application that sought leave, into

the substantive Motion for seeking Judicial Review orders. Evidently, the first two parameters of review being mistake or discovery of new material evidence are not applicable from the facts of this case herein. This is so because filing a wrong application seeking orders for leave and the court dismissing such an application, cannot be a mistake capable of being reviewed by the court. What the applicant is seeking in such circumstances is for this court to allow amendments of an already determined suit. Amendments to pleadings are only permitted at any time before judgment and not after determination. It follows then that this Court can only consider this issue on the third parameter being ‘*any other sufficient reason*’. This parameter is premised on the Court’s unfettered discretion, stemming from the fact that courts bear the inherent power to balance the interests and rights of the parties in meting the ends of justice. At the same time, the fact of ‘any other sufficient reason’ is to be considered by courts on a case-by case basis since it is a reason that should be parallel or comparable to the two parameters. This was the holding by the Supreme Court of India in the case of **Ajit Kumar Rath vs. State of Orisa & Others**, 9 Supreme Court Cases 596 at page 608 in which the apex Court aptly explained as follows:

***“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 for 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” used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule.”*

37. Having considered what the phrase “*any other sufficient reason*” entails as explained by the courts in several cases. *Mativo J. (as he then was) in Stephen Gathua Kimani vs. Nancy Wanjira Waruingi t/a Providence Auctioneers (Civil Appeal 142 of 2012) [2016] KEHC 6883 (KLR) (19 February 2016) (Ruling)* cited *Sir Dinshah Fardunji Mulla* in the “*The Code of Civil Procedure*”, 18<sup>th</sup> Edition, (Reprint) [2012], paragraph 17, page 3672, *Civil Appeal No. 90 of 2001; {2001} LLR 6937 (CAK)* and expressed himself thus: -

*“Mulla also states that:*

*“The expression ‘any other sufficient reason’ used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule.”*

*Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the tribunal under the Act to review its judgement. These words (i.e. sufficient reason) mean that the reason must be one sufficient to the court to which the application for review is made and they cannot be held to be limited to the discovery of new and important matter or evidence, or the occurring of a mistake or an error apparent on record.* (Emphasis added)

38. The Court of Appeal of Tanzania also expressed itself on what constitutes sufficient cause in the case of **The Registered Trustees of the Archdiocese of Dar-es-alaam vs. The Chairman Bunju Village Government & Others Civil Appeal No. 147 of 2006** thus: -

*“It is difficult to attempt to define the meaning of the words ‘sufficient cause’. It is generally accepted however, that the words should receive a liberal construction in order to advance substantial justice, when no negligence, or inaction or want of bona fides, is imputed to the appellant.”* (Emphasis added)

39. Similarly, in **Daphene Parry vs. Murray Alexander Carson {1963}** E.A. 546, the court held:-

***“Though the court should no ‘doubt’ give a liberal interpretation to the words ‘sufficient cause,’ its interpretation must be in accordance with judicial principles. If the appellant has a good case on the merits but is out of time and has no valid excuse for the delay, the court must guard itself against the danger of being led away by sympathy.....”***

(Emphasis added)

40. Flowing from the above authorities, and having carefully considered the reasons given by Counsel for the applicant, for failing to file a proper motion before the court which led to a dismissal of the *ex-parte* Applicant’s notice of motion, and being cognizant of the fact that while mistake of counsel should not be visited upon an innocent litigant, I find that that statement should not be taken to be a blanket reason for inept pleadings or to remedy substantive mistakes that may lead to a sound determination of a suit by the courts as was in the present case.
41. As stated before, parties are bound by their pleadings. The question for this Court is whether the replication of the orders sought for leave in the substantive application was substantive in nature and therefore grave to the *ex-parte* Applicant’s cause or was merely a technical issue that could be overlooked by this Court and remedied by **Article 159 of the Constitution**.
42. In determining this, I am guided by the decision in **Stephen Gathua Kimani** case (*supra*) where Mativo J. again citing the writings of Mulla

(supra) at **Page 1147, paragraph 10**, where Mulla wrote on Order 47 Rule 1 of the Civil Procedure Code of India, which is the equivalent of our Order 45 Rule 1 and held thus: -

***“Mulla also states that:-***

***‘The expression sufficient reason’ is wide enough to include misconception of fact or law by a Court or even by an advocate.”***

***This definition only covers misconception of facts of law but not negligence or conduct of an advocate.***

43. Positioning the facts of the present case, my observation is that the applicant has, in essence, invited this Court to reopen a concluded decision not on the basis of any error apparent on the face of the record, nor on discovery of new and important matter, but on the footing that his counsel conducted the litigation ineptly. That distinction is key. Judicial review proceedings are not ordinary civil proceedings. They are governed by strict procedural architecture, particularly as to form, timelines and the transition from leave stage to the substantive motion. The chamber summons for leave and the notice of motion that follows are not interchangeable instruments. The latter must properly and independently articulate the reliefs sought. Replicating the leave-stage prayers, without more, is not a mere procedural mistake of drafting. It goes to the competence of the substantive motion itself.

44. This Court, in striking out the motion, did not act on a technicality of form that could be cured under the broad principles of substantive justice. It acted on a defect that deprived the motion of legal validity. Once that finding was made, the only lawful path open to the applicant was to go back to the matter where leave was granted and seek extension of time and file a proper motion, subject of course to the Court's discretion. This is because, doctrines like res judicata under the Civil Procedure Act will not apply, because the notice of motion application was not determined on its merits, and there having been no valid prayers to be adjudicated upon by this Court. The applicant has not done so. Instead, it seeks to set aside or review the striking-out order on the ground that its counsel made a mistake by seeking wrong orders. That argument, though attractive at a superficial level, cannot be sustained within the confines of judicial review and review jurisdiction.

45. Review is a narrow remedy. It is not an appeal in disguise. It is available only where there is an error apparent on the face of the record; discovery of new and important evidence that could not be produced with due diligence, or other sufficient reason of a similar nature. No such ground has been demonstrated here. The Court's earlier determination that the defect was substantive and fatal, was a well thought out legal conclusion. Whether right or wrong, it is not an "error apparent"; it is, at most, a point that could have been taken on appeal, if the applicant felt aggrieved by the dismissal of the fatally defective notice of motion.

46. On the applicant invoking the principle that mistakes of counsel should not be visited upon a litigant, neither is that principle a cure for all procedural failures where the defect renders the proceedings fundamentally incompetent, nor can it be invoked to circumvent clear procedural requirements, especially in a jurisdiction as exacting as judicial review. To hold otherwise would render the rules governing such proceedings largely superficial. In the premises, I find that:

- a. The defect that led to the striking out of the substantive motion was not curable; it went to the root of the application.
- b. The order striking out the motion is not amenable to review on the grounds advanced.
- c. The present application is, in substance, an attempt to re-litigate or appeal the earlier decision through the back door.
- d. Accordingly, the application to set aside or review the striking-out order is declined.
- e. The application to extend or enlarge time in these proceedings to file a proper substantive motion or to file a fresh motion is declined
- f. The applicant's recourse, if any, lies in seeking in the chamber summons for leave file, extension of time to file a competent motion, or to file a fresh chamber summons for leave to apply, as the case may be, since the motion was dismissed not on merit but based on its incompetence.

47. In the end, I am unable to find merit in the applicant's notice of motion dated 8<sup>th</sup> January, 2026. The same is hereby dismissed.

48. There shall be no orders as to costs.

49. Orders accordingly.

50. This file is closed.

**Dated, Signed & Delivered virtually at Nairobi this 25<sup>th</sup> Day of March, 2026**

**R.E. ABURILI  
JUDGE**

ORIGINAL