

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
JUDICIAL REVIEW DIVISION
JR. NO. E145 OF 2025

BETWEEN

DOUGLAS NYOKWOYO..... APPLICANT

-VERSUS-

**INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF
KENYA.....1ST RESPONDENT**

**CHIEF EXECUTIVE OFFICER & SECRETARY TO
COUNCIL.....2ND RESPONDENT**

THE RETURNING OFFICER,

ICPAK COUNCIL ELECTIONS.....3RD RESPONDENT

RULING

- 1. The application that is before this court for determination is the one dated 27th June 2025 wherein the applicant seeks orders;**
 - 1) ...Spent.**
 - 2) THAT this Honorable Court be pleased to set aside the post-ruling Directions of the Court issued on 25th June 2025 directing the filing of written submissions on the Ex-parte Applicant's Notice of Motion dated 5^h June 2025 with a further date of mention to confirm compliance thereof.**

3) THAT the costs of this application be provided for.

2. On 16th July 2025, the Ex-parte Applicant was duly served with the court's directions with regard to filing of responses and submissions together with a Mention date for 12th November 2025 for purpose of confirming compliance of the court's directions.
3. On the said 12th November 2025, the Ex-parte Applicant was absent despite having been duly served. We refer the court to the duly filed Affidavits of Service dated 10th November 2025 and 13th November 2025, proving that the Ex-parte Applicant was duly informed of the court's directions and date.
4. The facts leading to the instant Application are that on 4th June 2025, this court issued an Order granting the Ex-Parte Applicant leave to institute Judicial Review proceedings and ordered that the leave so granted to operate as a stay of further implementation of the Interim Declaration of results dated 15th May 2025 including presentation of the election results during the 1st Respondent's Annual General Meeting.
5. Upon receipt of the orders, the Respondents filed a Notice of Motion Application dated 9th June 2025, seeking to set aside the entire orders issued on 4th June 2025 on the ground that the orders were obtained through non-disclosure of material facts.
6. The record is clear that parties were heard on merit and this court rendered a Ruling dated 25th June 2025 setting aside all the orders issued on 4th June 2025 in the following terms;

The Annual General Meeting is yet to take place and it is this court's finding that The Applicants moved the court prematurely.

They should wait for the Annual General Meeting then decide whether to lodge a written complaint with the Secretary to the Council for determination.

That way they will seek redress at the appropriate time before the council which is a statutory outfit.

It is this court's finding that the Application herein has been presented in breach of the said Regulation and offends the doctrine of ripeness and more importantly it, offends the express provisions of Section 9(2) of the Fair Administrative Action Act...

7. According to the applicant, the net effect of the above decision was that there could not exist any further proceedings in the matter, the leave issued having been set aside.
8. This proposition is indeed in line with the provision under Order 53 Rule 1 (1) which states that; No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefore has been granted in accordance with this rule.
9. It is also clear that the court having found that the proceedings were premature on the basis that the Ex-parte Applicant had not exhausted the internal mechanisms for dispute resolution, the instant Judicial Review proceedings could not proceed further to a hearing of the substantive motion.

10. However, after the Ruling was read, the court issued timelines for filing of written submissions on the Ex-parte Applicant's Notice of Motion filed pursuant to the leave initially granted, but which was now set aside.
11. It is submitted that these directions for filling of submissions were clearly issued in error.
12. The error complained is a notable error and no two opinions can be drawn from the issue whether the Ex-Parte Applicant's substantive motion could be heard when the necessary orders granting leave of court had been set aside.
13. In the landmark decision of **Nyamogo & Nyamogo v Kogo (2001) EA 170** the Court discussed what would constitute an error on the face of the record as follows;
14. There is a real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out.
15. The Applicant has explained that on the slated date Of the Ruling, the court only read the last paragraph thereof, hence parties were not fully appraised enough to raise the issue herein orally before the court.

16. The applicant urges the court to find that the directions for filing of Written Submissions in the matter were issued in error and proceed to set aside the said directions.
17. The case of **Samba t/a Samba & Co. Advocates v Mengich (Miscellaneous Application 7 of 2022) [2023] KEHC 26977 (KLR)** cited the case of **Republic v Advocates Disciplinary Tribunal Ex-parte Apollo Mboya [2019] eKLR**, whereby upon considering, comparative jurisprudence, the Court crystalized the principles for consideration in reviewing its own decisions as follows:
- (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 under 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/judgement of a coordinate or larger Bench of the Tribunal of 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.

18. In Republic v Public Procurement Administrative Review Board & 2 others [2018] eKLR, the Court observed as follows: -

“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 J and important matter of 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.”

- 19.** In the instant suit, the court is satisfied that the applicant has advanced tangible reasons to justify the grant of the orders sought. The applicant has moved the court promptly.

Order;

The application is allowed as prayed.

Dated, Signed and Delivered at Nairobi this 16th day of April, 2026.

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J. CHIGITI (SC)
JUDGE