



**Muri Mwaniki & Wamiti Advocates v Museum View Office Suites Limited (Environment and Land Miscellaneous Application 28 of 2018) [2024] KEELC 154 (KLR) (24 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 154 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**  
**ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 28 OF 2018**  
**A NYUKURI, J**  
**JANUARY 24, 2024**

**BETWEEN**

**MURI MWANIKI & WAMITI ADVOCATES ..... ADVOCATE**

**AND**

**MUSEUM VIEW OFFICE SUITES LIMITED ..... CLIENT**

**RULING**

1. Before court is a notice of motion dated 14<sup>th</sup> June 2023 filed by the client/applicant. The motion seeks the following orders;
  - a. Spent
  - b. Spent
  - c. That the Honourable Court be pleased to review and set aside the ruling dated 1<sup>st</sup> February 2023 by the Honourable Lady Justice A. Nyukuri and thereupon discharge unconditionally the orders contained therein.
  - d. That the costs of this application be provided for.
  - e. Any other orders that the court may deem fit to grant.
2. The application is premised on the grounds on its face as well as the supporting affidavit sworn by John K. Wambugu a director of the applicant. The applicant's case is that on 1<sup>st</sup> February 2023, this court dismissed the application dated 18<sup>th</sup> May 2021 on the basis that it had been filed out of time. That this was despite the fact that there was an earlier order issued by Hon. Justice Angote on 23<sup>rd</sup> June 2021 granting leave to file the reference out of time. That the order of 1<sup>st</sup> February 2023 was made on account of an apparent mistake as the order of 23<sup>rd</sup> June 2021 was not brought to the attention of the court. He attached the orders of 1<sup>st</sup> February 2023 and 23<sup>rd</sup> June 2021.



3. The application was opposed. The respondent filed grounds of opposition dated 16<sup>th</sup> October 2023. They stated that there are no grounds for review of the orders of 1<sup>st</sup> February 2023 and that if the applicant is dissatisfied, they should appeal. Further that the court exercised its discretion properly in dismissing the application and that the application was not filed timeously.
4. The application was disposed by way of written submissions and on record are submissions filed by the applicant on 9<sup>th</sup> October 2023 and those filed by the respondent on 25<sup>th</sup> October 2023, both of which this court has duly considered.

### Analysis and Determination

5. The court has duly considered the application, the response and submissions by the parties. The only issue that arise for determination is whether the applicant has met the threshold for review of the orders of this court made on 1<sup>st</sup> February 2023.
6. Section 80 of the [Civil Procedure Act](#) and Order 45 Rule 1 of the [Civil Procedure Rules](#) provide for the power of the court to grant review of its decision and the grounds for review. Section 80 of the [Civil Procedure Act](#) 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 of the [Civil Procedure Rules](#) provides as follows;

[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.
7. It is therefore clear that where there is new evidence that could not be procured after due diligence; or where there is an error or mistake apparent on the face of the record or where there is sufficient cause, the court may review its orders.
8. A mistake on the face of the record is an obvious mistake which stares one in the face and which does not need an elaborate examination of the facts to arrive at. In the case of *National Bank of Kenya Limited v. Ndungu Njau* [1997] eKLR the Court of Appeal held as follows;

" A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached on erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review."
9. In the instant matter, by its ruling of 1<sup>st</sup> February 2023, the court dismissed the application dated 1<sup>st</sup> May 2021 on the basis that the same being a reference was filed out of time. The record shows that on 23<sup>rd</sup> June 2021 the court allowed the applicant to file reference out of time. Although one of the prayers on the application dated 1<sup>st</sup> May 2021 was to extend time for filing the reference, the fact that that prayer had been allowed on 23<sup>rd</sup> June 2021 was not brought to the attention of this court, as those orders were issued by another Judge. It is clear that had this court been aware of the orders of 23<sup>rd</sup> June 2021, it would not have made the orders of 1<sup>st</sup> February 2023 which struck out the Chamber Summons dated 1<sup>st</sup> May 2021 for being filed out of time without leave of court. It is therefore my finding that there is an error apparent on the face of the record which ought to be corrected by an order of review.
10. I therefore find and hold that the application dated 14<sup>th</sup> June 2023 is merited and the same is allowed. The orders of 1<sup>st</sup> February 2023 are hereby set aside. The Chamber Summons dated 18<sup>th</sup> May 2021 is reinstated for the hearing of the substantive prayers. I make no order as to costs.
11. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 24<sup>TH</sup> DAY OF JANUARY, 2024 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM**

**A. NYUKURI**

**JUDGE**

In the presence of:

Mr. Lundi for applicant

No appearance for respondent

