



REPUBLIC OF KENYA



KENYA LAW
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**Wambua v Wanjiku (Civil Application 24 of 2020)
[2024] KECA 296 (KLR) (8 March 2024) (Ruling)**

Neutral citation: [2024] KECA 296 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION 24 OF 2020
DK MUSINGA, F SICHALE & FA OCHIENG, JJA
MARCH 8, 2024**

BETWEEN

HELLEN NDULU WAMBUA APPLICANT

AND

SALOME WANJIKU RESPONDENT

(Being an application for stay of execution against the orders of the Environment and Land Court at Nyabururu (Oundu, J.) delivered on 29th October, 2019 in ELC Case No. 373 OF 2017)

RULING

1. The applicant, Helena Ndulu Wambua, has filed the Motion dated 15.09/2021 seeking the following orders:
 - i. Spent
 - ii. That the orders issued on the 19th March, 2021 be reviewed and or varied.
 - iii. That costs of this application be in the cause.
2. The motion is supported by an affidavit dated 15/09/2021 and the grounds on the face of the motion. Principally, the applicant avers that the respondent was bereft of locus in filing Nyahururu ELC 373 of 2017; that on 20.03.2021 this Court differently constituted dismissed her application seeking to stay the judgment of (Oundu, J.) delivered on 29.10.2019; that the respondent has caused the issuance of a notice to show cause why she should not be arrested for not paying costs emanating from Nyahururu ELC No.373 of 2017, and that the said order for costs ought to be stayed pending the appeal.
3. The respondent, Salome Wanjiru, opposed the motion vide a replying affidavit dated 07.02.2023 in which she deponed that there was no error apparent on the face of the record to warrant a review, and neither was there sufficient ground to warrant a review of this Court's ruling of 19.03.2021. Finally,



- that the instant application had been overtaken by events as the respondent has already commenced execution.
4. On 25.09.2023 the motion came up before us for hearing. Learned Counsel Mr. Ondicho held brief for Mr. Bosire for the applicant, whilst learned Counsel Mr. Waichungo appeared for the respondent. Mr. Ondicho sought an adjournment on the basis that Mr. Bosire was indisposed. As there was no evidence of such indisposition, we directed that the motion proceeds to hearing.
 5. Mr. Waichungo for the respondent opted to wholly rely on the respondent's replying affidavit dated 07.02.2023 together with their submissions dated 03.05.2023. It was submitted for the respondent that the applicant's application for stay having been dismissed on 19.03.2021, the instant application seeks to re-litigate on a matter that has since been determined; that the application was overtaken by events as the applicant had started paying the costs thereof so as to avert civil jail, and finally that the motion did not meet the threshold for review as set out in order 45 of the [Civil Procedure Rules](#).
 6. We have considered the motion, the supporting affidavit and the opposition thereto tendered by the respondent by way of a replying affidavit, submissions, cited authorities and the law.
 7. In our view, the motion herein is a fairly straightforward matter. The applicant's Notice of Motion dated 14.03.2020 seeking an order for stay of execution of the judgment of Oundo, J. delivered on 29.10.2019 was dismissed on 19.03.2021. The applicant now seeks an order to have the ruling of 19.03.2021 set aside. We have not been told of any error apparent on the face of the record or shown any sufficient reason to warrant a review.
 8. 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."
 9. On the other hand, O.45 Rule 1 of the [Civil Procedure Rules](#) 2010, provides as follows: -

“... (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.”
 10. The above provisions have been enunciated in several decisions of this Court. in [Republic v Public Procurement Administrative Review Board and 2 others](#) (2018) eKLR it was held
 12. 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 and important matter or 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 un reasonable delay.”

11. In *Pancras T. Swai v Kenya Breweries Limited* (2014) eKLR this court held: -

“Order 44 rule 1 (now Order 45 rule 1 in the 2010 *Civil Procedure Rules*) gave the trial Court discretionary power to allow review on the three limbs therein stated or “for any sufficient reason.” ... As repeatedly pointed out in various decisions of this Court, the words, “for any sufficient reason” must be viewed in the context firstly of section 80 of the *Civil Procedure Act*, Cap 21, which confers an unfettered right to apply for review and secondly on the current jurisprudential thinking that the words need not be analogous with the other grounds specified in the order.”

12. In our considered view, no error and/or sufficient reason was given to us to warrant the review of this Court’s ruling of 19.03.2021. The motion herein is without merit. It is dismissed with costs to the respondents.

DATED AND DELIVERED AT ELDORET THIS 8TH DAY OF MARCH, 2024.

MUSINGA, (P)

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JUDGE OF APPEAL

F. SICHALE

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JUDGE OF APPEAL

F. OCHIENG

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

Deputy Registrar

