



**Walutsachi v St. Mary’s Mission Hospital (Civil Appeal (Application)  
E050 of 2021) [2023] KECA 1073 (KLR) (22 September 2023) (Ruling)**

Neutral citation: [2023] KECA 1073 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPEAL (APPLICATION) E050 OF 2021  
PO KIAGE, M NGUGI & F TUIYOTT, JJA  
SEPTEMBER 22, 2023**

**BETWEEN**

**SYLANUS MANUEL WALUTSACHI ..... APPELLANT**

**AND**

**ST. MARY’S MISSION HOSPITAL ..... RESPONDENT**

*(Being an application for review of the judgment of this Court  
(Kiage, Mumbi Ngugi & Tuiyott JJ.A) dated 23rd September, 2022)*

**RULING**

1. It is settled law that the residual jurisdiction of this Court to review its own decision should be invoked with circumspection. In *Benjob Amalgamated Limited v. Kenya Commercial Bank Limited* [2014] eKLR this Court explains this jurisdiction;

“The jurisprudence that emerges from the case-law from the aforementioned jurisdictions shows that where the Court is of final resort, and notwithstanding that it has not explicitly been statutorily conferred with the jurisdiction to reopen a decided matter, it has residual jurisdiction to do so in cases of fraud, bias, or other injustice with a view to correct the same and in doing so the principles to be had regard to are, on the one hand, the finality principle that hinges on public interest and the need to have conclusiveness to litigation and on the other hand, the justice principle that is pegged on the need to do justice to the parties and to boost the confidence of the public in the system of justice. As shown in the various authorities, this is jurisdiction that should be invoked with circumspection and only in cases whose decisions are not appealable (to the Supreme Court).”

2. Through an undated application but filed on 5<sup>th</sup> December, 2022 Sylanus M. Walutsachi (the applicant) asks us to review the decision of this Court (Kiage, Mumbi Ngugi and Tuiyott, JJA) made on 23<sup>rd</sup> September, 2022, dismissing his appeal. The grounds on the face of the application and the



affidavit in support reveal why the applicant beseeches us to review our Judgment. He states that this Court overstepped its mandate in upholding the judgment of the High Court without keenly evaluating the real grounds in the memorandum of appeal; by considering the submissions dated 15<sup>th</sup> January, 2019 by learned counsel Joseph Makhokha when counsel was not on record; and by overlooking the applicant's evaluation of the evidence.

3. Two of the grounds are asking this Court to sit on appeal over its decision, an invitation that this Court respectfully, but firmly, declines. The jurisdiction to review is not a jurisdiction for this Court to sit on appeal over its own decision and is clearly not one of the exceptional occasions when the residual jurisdiction will be activated (Benjoh Amalgamated).
4. On the charge that this Court considered and determined the matter on submissions of counsel who was not properly on record, no reasons have been put forth as to why Mr. Wanyonyi, learned counsel for the respondent, was not properly on record and the assertion suffers an insurmountable difficulty. At any rate, it is clear, on rereading our impugned decision, that the outcome would have remained unchanged even without the benefit of considering those submissions.
5. The motion of 15<sup>th</sup> November, 2022 is without merit and is hereby dismissed. But as the respondents did not attend Court, there shall be no order on costs.

**DATED AND DELIVERED AT KISUMU 22<sup>ND</sup> THIS DAY OF SEPTEMBER, 2023.**

**P.O. KIAGE**

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**JUDGE OF APPEAL**

**MUMBI NGUGI**

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**JUDGE OF APPEAL**

**F. TUIYOTT**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

