



**Kirui v Kipkurgat (Environment and Land Appeal E040 of 2022)  
[2024] KEELC 3893 (KLR) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3893 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT AND LAND APPEAL E040 OF 2022**

**JM ONYANGO, J**

**APRIL 30, 2024**

**BETWEEN**

**EZEKIEL KIMWENO KIRUI ..... APPELLANT**

**AND**

**KIBET KEBENEI KIPKURGAT ..... RESPONDENT**

**RULING**

**Introduction**

1. The Applicant moved the court through a Notice of Motion application dated October 2, 2023 supported by the affidavit of one Ezekiel Kimweno Kirui, sworn on even date.
2. The application was filed pursuant to various provisions of the law including Section 80 of the *Civil Procedure Act*, Order 45 of the *Civil Procedure Rules* and Section 3A and 63(e) of the *Civil procedure Act*
3. The application seeks the following Orders:
  1. Spent...
  2. That the Honourable Court does review the ruling issued by Hon. Justice Jane Onyango on September 26, 2023 dismissing the Appellant's Application dated March 13, 2023.
  3. That the Honourable Court be pleased to set aside the ruling issued by Hon. Justice Jane Onyango on 26<sup>th</sup> September, 2023 pending the hearing and determination of this application
  4. That there be a Stay of Execution of the Judgment in Eldoret MCEL NO. E181 of 2019 pending the final determination of this Application or further Orders of the Court.
  5. That status quo be maintained
  6. That cost of this application be provided for.



7. That honourable Court be pleased to make such further order as it may deem just and expedient in the circumstances of this case.
4. The application is premised on the grounds on the face of it and reiterated in the sworn affidavit of the Appellant herein.
5. The application is opposed by the Replying Affidavit of. Kibet Kibenei Kipkurgat sworn on October 26, 2023.

### **Background**

6. The instant application for review is in response to the ruling delivered by this Court on 26<sup>th</sup> day of September 2023.
7. In its ruling, the Court dismissed the application dated March 13, 2023 which sought a stay of execution pending appeal against the judgment in Eldoret ELC No. E181 of 2019.
8. The application was canvassed by way of written submissions and the same was duly considered by the court.
9. The application dated March 13, 2023 did not meet the prerequisite conditions for stay pending appeal and was subsequently dismissed for lack of merit.
10. Being aggrieved by the aforementioned ruling, the appellant/applicant filed instant application seeking a review.
11. The parties were directed to file written submissions. The Respondent filed their submissions dated 6<sup>th</sup> November 2023 on November 7, 2023. Regrettably, the Appellant failed to file their submissions.

### **Issues For Determination**

12. Having scrutinized the Appellant's application, the Replying Affidavit in response to the application and the written submissions filed, a single issue emerges for determination:  
  
Whether the instant application merits a review of the ruling dated and delivered on September 26, 2023.

### **Analysis And Determination**

13. The Court possesses considerable discretion in reevaluating its judgments, decrees, and orders. The grounds for exercising this review are well-established and outlined in Section 80 of the *Civil Procedure Act* (Cap 21) and Order 45(1) of the *Civil Procedure Rules*. These two provisions of the law exact very stringent conditions on what constitutes a meritorious application for a review.
14. Section 80 of the *Civil Procedure Act* confers the Court with jurisdiction and a broad latitude for review and empowers the Court to make any Order "as it thinks fit."
15. Additionally, Order 45 of the *Civil Procedure Rules*. Rule (1)(1) sets out the conditions under which a review may be considered and provides that:

Any person considering himself aggrieved... and who from the discovery of the 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 order made, or on some mistake or error apparent on the face of the record, or for any other



sufficient reason, desires to obtain a review of the Judgment to the court which passed the decree or made the order without unreasonable delay.

16. The provision in this section empowers the court with both jurisdiction and substantial discretion for review. Should the court find merit in an application for review, it may issue orders aimed at achieving the ends of justice.
17. It was therefore incumbent upon the Appellant to ensure that the instant application meets the conditions set out in the Order 45 Rule 1 of the [Civil Procedure Rules](#) to warrant a review of the earlier ruling and orders.
18. A thorough examination of the application dated October 2, 2023 fails to reveal any new or important evidence. Similarly, it fails to establish an error apparent on the face of the record or provide any sufficient reason to warrant a review. The instant application essentially reiterates the application dated March 13, 2023 and is for all intents and purposes, an attempt at a second bite of the cherry.
19. In paragraph 8 of the application, the appellant simply states that “there is sufficient reason to review the ruling dated September 26, 2023...” The appellant failed to expound on sufficient reasons which would warrant a review of the ruling. Simply put, the application disregarded the governing principles for a review set out in Order 45 Rule 1 of the [Civil Procedure Rules](#).
20. The Court of Appeal in [Benjob Amalgamated Ltd and another v Kenya Commercial Bank Ltd](#) (2014) eKLR pronounced itself on the issue of review in the following terms:
  26. The basic philosophy inherent in the concept of review is acceptance of human fallibility and acknowledgement of frailties of human nature and sometimes possibility of perversion that may lead to miscarriage of justice. In some jurisdictions, courts have felt the need to cull out such power in order to overcome abuse of process of court or miscarriage of justice.
21. An application for review would therefore succeed where a court deems it necessary to rectify a noticeable error or omission that necessitates correction. The Court of Appeal in [National Bank of Kenya Limited v. Ndungu Njau](#) [1997] eKLR expounded on the governing principles for reviews in the following terms:

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 an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.
22. In sum, a review cannot be based on a difference of opinion or on the court’s incorrect interpretation of the law. It should very well not be conflated with an appeal. A review is restricted to addressing patent errors. Review proceedings do not allow the court to delve extensively into evidence, whether oral or by affidavit, to uncover errors; doing so would essentially be acting as an appellate court.
23. The application dated October 2, 2023 fails to propound sufficient reasons to warrant a review and it consequently must fail.
24. The upshot of the foregoing is that the application lacks merit and is hereby dismissed with costs to the Respondent.

It is so ordered.



**DATED, SIGNED AND DELIVERED, AT ELDORET THIS 30<sup>TH</sup> DAY OF APRIL, 2024**

.....

**J. M. ONYANGO**

**JUDGE**

In the presence of;

1. Mr. Mwinamo for the Respondent
2. No appearance for the Appellant

Court Assistant: Mr. Brian K.

