



**Mbuthia & 45 others v Kenya National Farmers Federation; Kenfap Services Limited & another (Interested Parties) (Cause 1593 of 2018) [2025] KEELRC 1419 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1419 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1593 OF 2018**

**CN BAARI, J  
MAY 15, 2025**

**BETWEEN**

**CHARLES MBUTHIA & 45 OTHERS & 45 OTHERS & 45 OTHERS ..... CLAIMANT**

**AND**

**KENYA NATIONAL FARMERS FEDERATION ..... RESPONDENT**

**AND**

**KENFAP SERVICES LIMITED ..... INTERESTED PARTY**

**KILIMO TALII MERU SOUTH LIMITED ..... INTERESTED PARTY**

**RULING**

1. Before court is a Notice of Motion application dated 9<sup>th</sup> September, 2024, said to be brought pursuant to Sections 3 and 3A of the Civil Procedure Act, Order 45 Rule 1 and Order 51 Rule 1 of the Civil Procedure Rules.
2. The Applicant seeks that this Court invokes its residual jurisdiction and review, vary and/or set aside its Order (b), as to cost, made in the judgment by Hon. Justice James Rika dated 14<sup>th</sup> June, 2024. The Applicant further prays that this Court be pleased to review, vary and/or set aside the said Order and in the alternative, order that parties bear their own costs.
3. The application is supported by grounds on the face thereof and the affidavit of one Charles Mbuthia, the 1<sup>st</sup> Claimant/Applicant. The crux of the application is that in a judgment by Hon. Justice James Rika delivered on 14<sup>th</sup> June, 2024, the Hon. Judge ordered that costs to the Respondent and Interested Parties be paid by the 1<sup>st</sup> Claimant, who is the Applicant herein, and that the Respondent and Interested Parties are likely to commence the process of recovering the said awarded costs.



4. The 1<sup>st</sup> Claimant, the Applicant herein, avers that he at all material time to this suit acted in utmost good faith including but not limited to when obtaining Authority to Plead, as well as when pleading on behalf of the Claimants herein.
5. The Applicant states that the Advocate on record then, either failed and/or neglected to properly guide him and/or file a proper Authority to Plead, as the same forms the main basis for the decision to award costs to the Respondent and Interested Party, and have the Applicant solely bear the burden of the said costs. That it is only fair and just that the mistakes, negligence and/or oversight of an Advocate should not be visited upon his clients.
6. He avers that the suit was declined based on technicalities mainly attributed to the drafting and/or filing of the Authority to Plead, and not on the substance of the suit, and that the suit, besides the technicalities, is merited as it raises real issues of gross abuse of labour law and/or rights by the Respondent herein.
7. The Applicant states that he is a man of little means, living from hand to mouth, the unfair, and unlawful termination of his employment by the Respondent herein, having exacerbated economic tribulations and pray that court invokes its residual jurisdiction to review the error in the judgment.
8. The Respondent opposed the motion vide a replying affidavit dated 12<sup>th</sup> November, 2024, wherein, it avers that subsequent to the delivery of the judgment, the Claimant filed a Notice of Appeal against the Judgment necessitating the Respondents to file and serve a Notice of Address of Service. That this court therefore, on the strength of the Notice of Appeal filed, does not have the jurisdiction to entertain the application filed herein.
9. The Respondent avers that the prayers sought can only be granted by an Appellate Court, and this court cannot sit on Appeal of its own judgment. It avers further that the Claimants have not demonstrated any valid reason nor demonstrated a mistake on the face of the Judgment that will entitle them to an order they seek from this court.
10. It is the Respondent's prayer that the motion herein be dismissed with costs.
11. Parties filed submissions on the motion, and which have been duly considered.

### **Determination**

12. I have considered the application, and the grounds and affidavit in support thereof, the replying affidavit in opposition and the rival submissions.
13. Order 45 Rule 1 of the Civil Procedure Rules on the basis of which the motion was filed, states thus: -
  - “(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.”

14. Section 16 of the *Employment and Labour Relations Court Act* and Rule 33 of the Employment and Labour Relations Court (Procedure) Rules, 2016, empowers this court to review its judgments, awards, orders or decrees.
15. It is settled that review of judgment, award, order or decree is possible where there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made, on account of some mistake or error apparent on the face of the record, if the judgment or ruling requires clarification; or for any other sufficient reason.
16. The Claimant/Applicant seeks that this Court reviews, varies and/or set aside an order awarding costs to the Respondent and the Interested Parties herein, and that in the alternative, order that parties bear their own costs.
17. What the Claimant/Applicant seeks is certainly not based on a discovery of new evidence, neither is it the need to correct an error or mistake apparent on the face of the judgment, and nor does he seek the clarification of the judgment in issue or any part thereof. What the Claimant seeks is the reversal and/or setting a side of the award of costs that the court made against him, and in favour of the Respondent and the two interested parties.
18. In my view, what the Claimant/Applicant seeks under the instant motion, is a prayer that can only lie on an appeal and not in a review application.
19. For starters and as submitted by the Respondent, the Claimant/Applicant having lodged an appeal, would therefore not be properly before this court on a review application, even if he had valid grounds for review.
20. Secondly, to grant the orders sought, will no doubt amount to this Court sitting on appeal on a decision of a court of concurrent jurisdiction, and which invitation I decline.
21. The upshot therefore, is the dismissal of the Claimant/Applicant’s motion with no orders on costs.
22. Orders accordingly.

**SIGNED, DATED AND DELIVERED AT NAIROBI THIS 15<sup>TH</sup> DAY OF MAY, 2025**

**C. N. BAARI**

**JUDGE**

Appearance:

Ms. Oyugi present for the 1<sup>st</sup> Claimant/Applicant

Ms. Kache present for the Respondent

N/ for the 1<sup>st</sup> Interested Party

N/A for the 2<sup>nd</sup> Interested Party

Ms. Esther S - Court Assistant

