



**Mucheru aka Mugo v Gikoe Mung'aria Investments Company Limited (Cause 439 of 2015) [2024] KEELRC 2395 (KLR) (30 September 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2395 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 439 OF 2015  
L NDOLO, J  
SEPTEMBER 30, 2024**

**BETWEEN  
JAMES MWANGI MUCHERU AKA MUGO ..... CLAIMANT  
AND  
GIKOE MUNG'ARIA INVESTMENTS COMPANY LIMITED ..... RESPONDENT**

**RULING**

1. On 23<sup>rd</sup> March 2023, I delivered judgment in favour of the Claimant in the sum of Kshs. 263,679. A year later, the Claimant filed a Notice of Motion dated 15<sup>th</sup> March 2024, seeking review of the judgment by reinstating the defence by New Mung'aria Investment Company Limited aka Kanjeru Company Limited.
2. The application is supported by the Claimant's own affidavit and is based on the following grounds:
  - a. That there is a sufficient reason for the application;
  - b. That the Court held that the defences filed by Peter Kimani Waraho and New Mung'aria Investment Company Ltd were incompetent and thus struck them out;
  - c. That New Mung'aria Investment Company Ltd was the actual Respondent;
  - d. That there is no company known as Gikoe Mung'aria Investments Co Ltd;
  - e. That an application dated 26<sup>th</sup> November 2019 by the Respondent, sought orders to enjoin New Mung'aria Investment Ltd as a party to the suit;
  - f. That no prejudice will be occasioned against Peter Kimani Waraho and New Mung'aria Ltd since they testified at trial;
  - g. That New Mung'aria Investment has mutated into Kanjeru Investment Ltd;



- h. That there being no company known as Gikoe Mung'aria Investment Ltd, the decree issued by the Court on 3<sup>rd</sup> April 2023 will be rendered nugatory and of no consequence;
  - i. That it will be in the best interest of justice to grant this application.
3. A replying affidavit was sworn by Peter Kimani Waraho on 12<sup>th</sup> June 2024. He depones that he is neither a director nor a shareholder of the Respondent and that he does not know a company called Gikoe Mung'aria Investment Co. Ltd.
4. Waraho terms the Claimant's application as an abuse of the court process, adding that this Court is now functus officio.
5. The power of this Court to review its own decisions is donated by Section 16 of the [Employment and Labour Relations Court Act](#) and Rule 33 of the Employment and Labour Relations Court (Procedure) Rules.
6. Rule 33(1) of the Procedure Rules provides as follows:
  1. A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling-
    - a. if 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; or
    - b. on account of some mistake or error apparent on the face of the record; or
    - (c) if the judgment or ruling requires clarification; or
    - (d) for any other sufficient reason.
7. The provision for review does not allow the Court to have a take two at its own decision; its purpose is to facilitate correction of obvious errors that can be achieved without engaging in drawn out legal argument.
8. This position was affirmed in *National Bank of Kenya Limited v Ndungu Njau* [1997] eKLR where it was held that:

“A review may be granted whenever the court considers 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.”
9. By his application, the Claimant asks the Court to reconsider its decision to strike out the response filed by Peter Kimani Waraho and New Mung'aria Investments Co. Ltd together with accompanying witness statement and submissions.
10. If I was wrong in my decision in this regard, the error cannot be corrected through the path of review as this would take me on the erroneous avenue of sitting on appeal over my own decision.



11. In its decision in *Nyamogo and Nyamogo Advocates v Kogo* (2001) EA 173, the Court of Appeal stated as follows:

“There is a real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two options, a clear case of error apparent on the face of the record would be made out. An error which has to be established by a long-drawn process of reasoning or on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was also possible. Mere error or wrong view is certainly no ground for a review although it may be for an appeal.”

12. If the Claimant was aggrieved by my decision, the correct thing to do would have been to pursue an appeal at the Court of Appeal. As held in *Mukuru Munge v Florence Shingi Mwawana & 2 others* [2016] eKLR the residual jurisdiction retained by a court after judgment cannot be used to cure a wrong view of law or fact.

13. For the foregoing reasons, I find and hold that the Claimant’s application is without merit and is dismissed with no order for costs.

14. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 30<sup>TH</sup> DAY SEPTEMBER 2024**

**LINNET NDOLO**

**JUDGE**

Appearance:

Ms. Chege for the Claimant

Mr. Nyabena for the proposed 2<sup>nd</sup> Respondent

