



**SOO v International Center for AIDS Care and Treatment Programs (ICAP) Kenya
& another (Cause 137 of 2015) [2022] KEELRC 1479 (KLR) (9 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1479 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 137 OF 2015
CN BAARI, J
JUNE 9, 2022**

BETWEEN

SOO CLAIMANT

AND

**INTERNATIONAL CENTER FOR AIDS CARE AND TREATMENT
PROGRAMS (ICAP) KENYA 1ST RESPONDENT**

**MEDICAL OFFICER OF HEALTH (MOH) RARIEDA SUBCOUNTY 2ND
RESPONDENT**

RULING

1. Before court is a notice of motion application dated February 18, 2022, said to be brought pursuant to Article 159(2)(d) of the [Constitution](#), section 80 of the [Civil Procedure Act](#), and Orders 45 and 51 rule 1 of the [Civil Procedure Rules](#).
2. The applicant seeks review of the ruling of this court made on January 20, 2022 and that the chamber summons application dated February 14, 2021 be determined on merit, or in the alternative, the court grants the applicant leave to file a reference out of time, and that the reference dated February 14, 2021 be deemed to be properly on record.
3. The application is supported by grounds on the face thereof and the affidavit of Mr Owino Kojo, the counsel on record for the applicant.
4. The applicant contends that there is an error apparent on the face of the record and that the ruling of the Deputy Registrar of March 11, 2020, was neither typed nor issued prior to the filing of the reference of dated February 14, 2021.
5. The respondent did not oppose the application.



Determination**

6. I have considered the application, and the grounds and affidavit in support thereof.
7. Order 45 rule 1 of the *Civil Procedure Rules* states as follows in regard to review:
 - “(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.”
8. 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 judgements, awards, orders or decrees.
9. 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.
10. The application is premised on there being an error or mistake apparent on the face of the ruling delivered on January 20, 2022. The applicant has not told the court what the error/mistake is that warrants the review of the decision of the court.
11. An application for review is not a right of a party; but an equitable remedy which calls for a basis to be laid by the applicant to the satisfaction of the court. Further, a request for review is not an appeal or a chance for the applicant to re-argue his/her application like the applicant is seeking to do.
12. In the final analysis, I find no grounds to warrant the setting aside of the orders of this court made on January 20, 2022.
13. The upshot is that the applicant’s application dated February 18, 2022, is dismissed with costs.
14. Orders accordingly.

SIGNED, DATED AND DELIVERED AT KISUMU THIS 9TH DAY OF JUNE, 2022

CHRISTINE N. BAARI

JUDGE

Appearance:

Mr. Kojo present for the Claimant/Applicant

Ms. Weru present for the Respondent



Ms. Christine Omollo - Court Assistant

