



**Kamau v Nyaga (Environment and Land Appeal E052 of 2023)  
[2024] KEELC 6135 (KLR) (19 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6135 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E052 OF 2023  
LN MBUGUA, J  
SEPTEMBER 19, 2024**

**BETWEEN**

**JOSEPH NDIRITHI KAMAU ..... APPELLANT**

**AND**

**JOAN W NYAGA ..... RESPONDENT**

**RULING**

1. Before me is the Appellants Notice of Motion dated 6.5.2024 seeking orders for review of this court’s ruling dated 18.4.2024 in which the applicants application dated 15.12.2023 seeking a stay of the tribunals ruling dated 3.11.2024 was dismissed. The applicant avers that his submissions were not considered by the court, that the ruling goes against Article 159 of *the Constitution*, and that the court did not consider the decision of the tribunal in its entirety including the fact that he was slapped with costs.
2. In opposition thereof, the respondent filed a replying affidavit dated 4.6.2023 where it is averred that the application does not meet the threshold for review and that it would have been more prudent for the applicant to await the final decision of the court.
3. I have considered all the issues raised herein. The legal regime governing matters of review is to be found under Section 80 of the *Civil Procedure Act* and Order 45 rule 1 of the Civil Procedure Rules, where the latter provides grounds for review as follows:

- “(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 review of judgment to the court which passed the decree or made the order without unreasonable delay.”

4. The applicant has not clearly stated the grounds applicable to his case in so far as the cited provisions of law are concerned. The issue of none compliance on filing of submissions in the application dated 15.12.2023 is captured at paragraph 5 of the court’s ruling delivered on 18.4.2024, thus the said issue cannot be a basis for review of the court’s orders. The applicant avers that “this court did not analyze the extent to which the decision of the tribunal prejudiced the appellant”. However, having delivered its ruling on 18.4.2024, I find that the re-interrogation of the tribunal ruling is tantamount to this court clothing itself with appellate attires, which is not tenable.
5. As pointed out by the respondent, the applicant should move with haste to prosecute his appeal to its logical conclusion instead of delving into interlocutory applications whose net effect is to derail the trial. In the end, I find that the application dated 6.5.2024 is not merited, the same is hereby dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19<sup>TH</sup> DAY OF SEPTEMBER, 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

Miiri holding brief for Odera for Appellant

M/s Mbhonyo for Respondent

Court assistant: Eddel

