



Eldama Ravine Road Residents Association & 3 others v Minara Homes Limited & 5 others (Environment & Land Petition E059 of 2022) [2024] KEELC 6984 (KLR) (17 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6984 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION E059 OF 2022
LN MBUGUA, J
OCTOBER 17, 2024**

BETWEEN

ELDAMA RAVINE ROAD RESIDENTS ASSOCIATION ASSOCIATION 1ST PETITIONER

PINAL PATEL 2ND PETITIONER

ERICK MUTHAMIA 3RD PETITIONER

NEHA GUDHKA 4TH PETITIONER

AND

MINARA HOMES LIMITED 1ST RESPONDENT

THE NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY (NEMA) 2ND RESPONDENT

THE DIRECTOR GENERAL-NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA) 3RD RESPONDENT

NATIONAL CONSTRUCTION AUTHORITY 4TH RESPONDENT

COUNTY EXECUTIVE COMMITTEE MEMBER LANDS, URBAN PLANNING, URBAN RENEWAL, HOUSING AND PROJECT MANAGEMENT 5TH RESPONDENT

COUNTY GOVERNMENT OF NAIROBI 6TH RESPONDENT

RULING

1. The Petitioners filed this suit contemporaneously with an Application dated 7.12.2022 seeking injunctive orders against the respondent. In turn the 1st respondent filed an application dated 30.1.2023



- seeking orders to strike out the suit. In a ruling delivered on 11.5.2023, the court dismissed both the petition and the application dated 7.12.2022 on the basis that the petitioner had failed to exhaust the Dispute Resolution Mechanisms available under the relevant statutes.
2. The petitioners have now filed an application dated. 5th June 2023 seeking orders to set aside the aforementioned ruling of 11.5.2023, that this petition be reinstated, and that time be extended for the petitioners to file a replying affidavit and written submissions. That subsequently, the respondents too be allowed to file written submissions. In the alternative, the Replying affidavit and written submissions dated and filed on 18th April, 2023 and 19 April 2023, respectively be admitted and be considered by the court.
 3. The application is supported by the grounds set out on the face of the application and on the replying affidavit of Herman Omiti, the advocate for the petitioners. He contends that on 16th. February 2023, the petitioners were directed to file and serve a replying affidavit and written submissions by 16th March 2023, following which the rest of the parties would file their written submissions by 30th March 2023.
 4. The petitioners contend that they filed their replying affidavit and written submissions on the 18th and 19th April 2023, outside the given timelines, while the respondents did not file submissions in respect of the two applications. The Petitioners contend that the gravamen of the arguments advanced in their replying affidavit and written submissions is that there are exceptions which existed in this case allowing the party to approach the court directly instead of invoking the alternative dispute resolution mechanism. And in that regard, the replying affidavit and the submissions should be admitted.
 5. In their submissions dated 27th October 2023, the petitioners have urged the court to invoke its inherent powers as set out in Section 3A of the *Civil Procedure Act* so as to set aside the orders in question. They also urge the court to consider the provisions of Article 159 of *the Constitution* which states that justice shall be administered without undue regard to procedural technicalities. To this end reference was made to the case of David Bundi v. Timothy Muthee [2022] eKLR, Wachira Karani v Bildad Wachira 2016 EKLR and Mureithi Charles and Another v Jacob Atina, Nyangesuka [2022] eKLR.
 6. On extension of time, the petitioners argue that the respondents will not suffer any prejudice if such extension is granted. Adding that on the other hand, they (petitioners) stand to suffer injustice as they will be denied an opportunity to ventilate their grievances before this court. To this end, reference to was made to the cases of; Paul Wanjohi Mathenge v Duncan Gichane Mathenge 2013 eKLR, John Karani Mwende v Japheth Bundi Chebari, [2021] eKLR and Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission and 7 others [2014] EKR.
 7. Finally, the petitioners seek costs of this application.
 8. The application is opposed by the 1st respondent via their grounds of opposition dated 15th June, 2023. They contend that the application does not meet the threshold to warrant the setting aside of the ruling of 11th May 2023. They add that even if the matter was reconsidered, the outcome would still be the same as the gravamen of the applicants case is the failure to comply with the statutory dispute resolution mechanisms within the statutory timelines. Adding that there's no legal justification for bypassing the set down statutory dispute resolution mechanisms.
 9. Further, it is argued that the petitioners have not offered any explanation as to why they failed to file their documents as stipulated by the court.
 10. In their submissions dated 15th November 2023, the 1st respondent reiterated the averments set out in their grounds of opposition. It is further argued that extension of time is a creature of equity and a party can only enjoy it if it acts equitably. Thus one has to lay a basis demonstrating that they were



not at fault. In the case at hand, no justifiable or extenuating circumstances have been presented by the petitioners to warrant the exercise of this courts discretion to enlarge time. In support of their case, the 1st respondent relied on the case of Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission and 7 Others [2014] EKR.

11. The 5th and 6th respondents opposed the application via their grounds of opposition dated 15th September 2023, contending that the grounds set out in the application are not mountainous enough to warrant the setting aside the judgment entered 11.5.2023. They contend that the petition was dismissed on the basis that it offended the provisions of section 61 of the *Physical and Land Use Planning Act*, as the petitioner had failed to exhaust the applicable dispute resolution mechanisms. Adding that this court cannot sit on appeal on its own decision which offends the doctrine of functus official.
12. In their submissions dated 5th December 2023, the 5th and 6th respondents contend that the application fails to provide sufficient grounds to justify the review as envisaged under Section 80 of the *Civil Procedure Act* as well as Order 45 of the Civil Procedure Rules. To this end, the case of Mercy Mwende Kivindu vs. S.M.Anjinchi as the Secretary & Executive Director of Kenya Institute of Bankers (2015) eKLR was cited.
13. On extension of time, it is argued that the petitioners have not cited any reasonable circumstances to warrant grant of an extension of time as they merely stated that failure to file their documents on time was inadvertence of their counsel which should not be visited upon them.
14. I have considered all the arguments raised herein including the rival submissions. As rightly submitted by the 1st, 5th and 6th respondents, the petitioners are indirectly seeking a review of the orders given on 11.5.2023 which prayers fall under the ambit of the provisions of Section 80 of the *Civil Procedure Act* as well as Order 45 of the Civil Procedure Rules.
15. While considering the import of the above provisions of law, the court in *Samba t/a JO Samba & Co Advocates v Mengich (Miscellaneous Application 7 of 2022)* [2023] KEHC 26997 (KLR) (20 December 2023) (Ruling) cited the case of Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] eKLR, whereby upon considering, comparative jurisprudence, the Court crystallized the principles for consideration in reviewing its own decisions as follows:
 - i. A court can review its decision on either of the grounds enumerated in Order 45 Rule 1 and not otherwise.
 - ii. The expression "any other sufficient reason" appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds.
 - iii. An error which is not self-evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of record justifying exercise of power under Section 80.
 - iv. An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
 - v. A decision/order cannot be reviewed under Section 80 on the basis of subsequent decision/ judgment of a coordinate or larger Bench of the tribunal or of a superior court.
 - vi. While considering an application for review, the court must confine its adjudication with reference to material, which was available at the time of



initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/ decision as vitiated by an error apparent.

- vii. Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/ tribunal earlier.
- viii. A mistake or an error apparent on the face of the record means a mistake or an error, which is prima-facie visible and does not require any detail examination.....”.

16. The primary ground advanced by the petitioners for seeking a review of the ruling of 11.5.2023, the reinstatement of their suit and extension of time to admit their replying affidavit and submissions is anchored on the fact that the court did not consider their aforementioned documents in the ruling in question. It is however imperative to note that the court considered the pleadings of the petitioners in its analysis and determination as captured from paragraph 22 to the end in the ruling of 11.5.2023. The said pleadings remain intact to date, hence neither affidavits, nor submissions can be construed as to vary the foundational pleadings of the petitioners.
17. In paragraph 10 of the supporting affidavit to their application, the petitioners merely state as follows; “I believe that the Petitioner adequately responded to the 1st Respondent’s Application through their Replying Affidavit dated 18th April, 2023 albeit they were filed outside the Court’s timelines. Moreover, we argued in our written submissions the grounds on which we believed the issues in our Petition were best suited for determination by this Honourable Court and not the dispute resolution mechanisms provided by the three statutes.”
18. Firstly, that argument does not in any way turn on the grounds of review enumerated under Order 45 of the Civil procedure rules. Secondly, the grounds are devoid of any plausible explanation as to why the petitioners did not comply with the court’s directions.
19. In the case of *Moschion v Mwangi* (Environment & Land Case 350 of 2018) [2023] KEELC 17144 (KLR) (27 April 2023) (Ruling) Neutral citation: [2023] KEELC 17144 (KLR), this court while dismissing several consolidated matters for non compliance with courts directions cited the Supreme Court of Kenya case of *Dande & 3 others v Director of Public Prosecutions & 2 Others* (Petition 4 (E005) of 2022) [2022] KESC 23 (KLR) (Civ) (19 May 2022) (Ruling), where the court stated that:

“The practice of filing documents at the 11th hour was irregular and un-acceptable”.
20. Still in the *Moschion v Mwangi* case (supra) , the court went on to cite the case of *Isiolo Stage View Enterprises v Isiolo County Government & 2 others* [2018] eKLR, where the court (Mbugua J) had this to say on the importance of time standards.

“Time standards help courts to closely manage and monitor the processing of cases from filing to conclusion. Further, time standards set defined targets for the completion of key processes, steps and events, establish overall goals that judges and lawyers must meet, create the expectation of what constitutes timeliness, and are essential to eliminating and avoiding case backlogs. The standards reflect a commitment by the courts to complete cases promptly, and also reflect what court users regard as a reasonable time for the resolution of cases.



The net effect of non-compliance with the set timelines is delay, creation of backlog, more acrimony and even confusion”

21. What resonates from the cited case law is that the issue of compliance with courts directions is weighty as it affects the overall administration of justice. Thus it was not enough for the petitioners to state that they filed their documents albeit late.
22. In the supreme court of Kenya case of Fredrick Otieno Outa v Jared Odoyo Okello & 3 Others [2017] eKLR, the court while dealing with matters of review cited the Indian case of Northern India Caterers (India) v. Lt. Governor of Delhi 1980 AIR 674, where the court remarked:

“It is well settled that a party is not entitled to seek a review of a Judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a Judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.”
23. This far, the discourse gives a clear picture as to why the petition cannot be brought back to life , hence the issue of extension of time must also fall by the way side. In the final analysis, I find that the application dated 5.6.2023 is not merited, the same is hereby dismissed with costs to the 1st respondent as well as the 5th and 6th respondents.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17th DAY OF OCTOBER 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Olweya holding brief for Omiti for Petitioners

Asli for 1st Respondent

Muyai for 2nd and 3rd Respondents

Nduati and Korir for 5th and 6th Respondents

Court Assistant: Joan and Vena

