



**Naurori v Freeman & 2 others (Environment & Land Case
E010 of 2023) [2025] KEELC 697 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 697 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE E010 OF 2023
CG MBOGO, J
FEBRUARY 13, 2025**

BETWEEN

WILLIAM SANINGO NAURORI PLAINTIFF

AND

BRIAN WAYNE FREEMAN 1ST DEFENDANT

MARA POTOGRAPHIC SAFARIS 2ND DEFENDANT

FREEMAN SAFARIS LIMITED 3RD DEFENDANT

RULING

1. Before this court for determination is the Notice of Motion dated 23rd October, 2024, filed by the 3rd defendant/applicant, and it is expressed to be brought under Sections 80, 63(e) and 3A of the [Civil Procedure Act](#) and Order 45 Rule 1 of the Civil Procedure Rules, seeking the following orders: -
 1. Spent.
 2. That the ruling and orders of the honourable court made on 14/10/2024 be reviewed and set aside and the application dated 10.06.2024 be heard and determined on merit as the honourable court erroneously ruled that the applicant did not file its submissions whereas the same were filed and served but not placed in the court file by the registry.
 3. That such further and other relief be granted to the applicant/respondent as this court deems fit and expedient in the circumstances.
2. The application is premised on the grounds on its face, and it is further supported by the affidavit of Erick Murithi, advocate sworn on even date. The learned counsel for the 3rd defendant/applicant deposed to the events leading to the determination of the Notice of Motion dated 10th June, 2024. He deposed that in compliance with the court's direction as to the disposal of the said application, they filed their written submissions dated 24th July, 2024 on 1st August, 2024, and served the same upon the



plaintiff/respondent. Further, that on 12th August, 2024, the plaintiff/respondent served them with his written submissions on the same email address.

3. The learned counsel deposed that the further affidavit sworn on 22nd July, 2024 which was filed together with the written submissions were considered in the ruling delivered on 14th October, 2024 save for the written submissions which were not placed on record for the court's consideration. He deposed that the 3rd defendant/ applicant through its counsel filed its written submissions which were inadvertently not placed on record, and it would be in the interest of justice that the instant application be reviewed and set aside to allow its submissions.
4. The plaintiff/respondent filed his replying affidavit sworn on 1st December, 2024 in opposition to the application. The plaintiff/respondent deposed that the application is founded on deliberate falsehood meant to mislead this court into granting the orders sought. Further, he deposed that the 3rd defendant/ applicant has not demonstrated sufficient grounds to warrant grant of the orders sought. Further, that it has not in any way attempted to demonstrate how the impugned ruling was not proper, or erroneous for reasons that their submissions were not considered.
5. The plaintiff/respondent further deposed that the 3rd defendant/ applicant has failed to demonstrate that had the court considered their submissions, it would have arrived at a totally different finding. Further, that it has not demonstrated that the ruling was obtained by fraud or deceit, that the court was not competent, and that the court was misled into giving the ruling under mistaken belief that parties had consented to. In conclusion, the plaintiff/respondent deposed that the application has been overtaken by events and the order under reference is an act in futility.
6. The application was canvassed by way of written submissions. The 3rd defendant/ applicant filed its written submissions dated 13th January, 2025. The 3rd defendant/ applicant submitted that it filed its written submissions to the Notice of Motion dated 10th June, 2024, but the same was not placed on record.
7. The 3rd defendant/ applicant submitted that it has met the grounds for review under Section 80 of the [Civil Procedure Act](#) and Order 45 of the Civil Procedure Rules, and that the omission of its written submissions from the record was purely inadvertent on account of an error or out of a mistake. To buttress on this submission, the 3rd defendant/ applicant relied on the cases of National Bank of Kenya Limited v Ndungu Njau [1997] eKLR and Ibrahim Mungara Mwangi v Francis Ndegwa Mwangi [2014] eKLR.
8. The plaintiff/ respondent filed his written submissions dated 20th December, 2024 where he raised one issue for determination which is whether the application is merited to warrant issuance of prayers for review. On this issue, the plaintiff/respondent submitted that it is mandatory that the applicant satisfactorily demonstrates that the court in arriving at a decision misdirected himself in the exercise of such a discretion, and as a result, a wrong decision was made and/or arrived at or it was manifest from the decision as a whole that the judge clearly misdirected himself or is clearly wrong and as a result, there is an injustice. Reliance was placed in the case of Parliamentary Service Commission v Martin Nyaga Wambora & Others [2018] eKLR and National Bank of Kenya v Ndungu Njau [1997] eKLR.
9. The plaintiff/respondent further submitted that it is incumbent upon the court to try and find as to whether the applicant has not demonstrated that this application falls within the ambits of Section 80 of the [Civil Procedure Act](#) and Order 45 of the Civil Procedure Rules. To buttress on this submission, the plaintiff/ respondent relied on the cases of Jasbir Singh Rai & 3 Others v Tarlochan Singh Rai & 4 Others, Supreme Court Application No. 4 of 2012 [2013] eKLR and Fredrick Otieno Outa vs Jares Odoyo Okello & 3 Others [2017] eKLR.



10. I have considered the application, the replying affidavit and the written submissions filed by the respective parties. In my view the issue for determination is whether the 3rd plaintiff/applicant has met the requirements for review and/or setting aside the ruling delivered on 14th October, 2024.

11. Section 80 of the *Civil Procedure Act* provides as follows: -

“Any person who considers himself aggrieved—

- (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
- (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

12. Order 45 Rule 1 of the Civil Procedure Rules further provides:-

“1.

(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.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review”

13. From the above provisions of the law, it is clear that for an application such as the one before me to succeed, there has to be discovery of new and important matters or evidence, mistake or error on the face of the record and any other sufficient reason. Having carefully considered the application, the 3rd defendant/applicant based its grounds for review and/or setting aside of the orders on one ground which is that of an error apparent on the face of record.



14. In the instant application, the 3rd defendant/applicant detailed the circumstances that culminated to the ruling delivered by this court with regard to the Notice of Motion dated 10th June, 2024. On the other hand, the plaintiff/respondent argued that the 3rd defendant/applicant has not met the grounds for grant of the orders of review, and/or setting aside. I have perused the record in this file, and indeed, this court in its ruling delivered on 14th October, 2024 noted that the 3rd defendant/applicant did not file its written submissions. It will be noted that in the directions given by this court on 13th June, 2024, it was clear that the application would be canvassed by way of written submissions. I have perused the record and specifically the CTS system. Indeed, it is true that the 3rd defendant/applicant filed its written submissions on 1st August, 2024, but the same was not placed in the court file. However, the written submissions referred to, do not have a heading indicating so, as written submissions. Perhaps that explains why the registry could not place this material in the court file.
15. In the case of National Bank of Kenya Ltd vs Ndungu Njau [1997] eKLR, it was held,
- “A review may be granted whenever the court considers that 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.”
16. In my view, where the court gives directions as to the disposal of a matter that is before it, the whole process from filing to the determination becomes conclusive. In this case, the application dated 10th June, 2024, was to be disposed by way of written submissions. As such, the written submissions formed part of the pleadings/proceedings before court. For it to be said that justice has been served on all the parties, the said written submissions ought to be included in the record for consideration by the court.
17. In this case, I find that there was an error apparent on the face of record, and it would only be in the interest of justice that the written submissions filed by the 3rd defendant/applicant are considered before the court pronounces itself.
18. From the above, I find merit in the Notice of Motion dated 23rd October, 2024. I proceed to issue the following orders: -
- i. The ruling delivered on 14th October, 2024 is hereby set aside.
 - ii. The Notice of Motion dated 10th June, 2024 to be heard and determined on its merit.
 - iii. I make no orders as to costs.
- Orders accordingly.

DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 13TH DAY OF FEBRUARY, 2025

HON. MBOGO C.G.

JUDGE

13/02/2025

