



**County Government of Uasin Gishu v Trustees Eldoret Churches
Urban Project Trust Fund (Environment & Land Case E031 of 2023)
[2024] KEELC 13921 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13921 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E031 OF 2023
EO OBAGA, J
DECEMBER 19, 2024**

BETWEEN

COUNTY GOVERNMENT OF UASIN GISHU PLAINTIFF

AND

**THE TRUSTEES ELDORET CHURCHES URBAN PROJECT TRUST
FUND RESPONDENT**

RULING

1. This is a ruling in respect to a Notice of Motion dated 4th October, 2024, wherein the Defendant/Applicant sought the following orders: -
 - a. Spent.
 - b. That the honourable court be pleased to review the ruling delivered on 3/10/2024.
 - c. That costs be provided for.
2. The application is based on the 12 grounds thereof and the Supporting Affidavit sworn by Evans Ogeto Miyienda on 03.02.2021, an Advocate of the High Court of Kenya having conduct of the matter on behalf of the Applicant.
3. The Applicant avers that this court issued a ruling on 3rd October, 2024, whose effect was to dismiss their application dated 28/8/2024. It is his claim that instead of this court dealing/considering prayer No. 3 in the said application and which sought orders of temporary injunction; this court addressed and considered prayer No. 4.
4. He also contends that the said application dated 28/8/2024 was not based on mere apprehension but on clear evidence; that on 3/10/2024 at about 4.00p.m. a group of about 10 people entered the applicant's premises.



5. It was further his claim that orders of injunction provided under Order 40 of the Civil Procedure Rules are not a preserve of plaintiffs who have filed suits. He maintained that the applicant is the registered proprietor of the suit property and he does not intend to file a counter-claim. He urged the court to review its ruling issued on 3/10/2024 for the reason that the court did not deal with prayer No. 3 in the said application dated 28/8/2024.
6. The application was not opposed. Despite the plaintiff/ respondent being served with the application and a return of service dated 23/9/2024 filed to that effect; the respondent neither filed any response nor attended court during the hearing of the application.
7. When this matter came up for interpartes hearing on 18/11/2024; counsel for the defendant/applicant informed the court that the application was unopposed and that they would be relying on their supporting affidavit. I will therefore proceed to consider the application as hereunder;
8. The sole issue arising for determination is whether the applicant has met the standard to warrant the review and/or setting aside of the Ruling delivered on 3rd October, 2024;
9. The grounds for review and/or setting aside of an order of the court are now well settled. The court in determining whether or not to grant such orders ought to exercise such discretionary powers judiciously taking into account the circumstances of each case.
10. Section 80 of the Civil Procedure Act as read with Order 45 Rule 1 of the Civil Procedure Rules outline the statutory provisions for the grant of orders of review. While section 80 empowers the court to make orders for review, Order 45 Rule 1 sets out the jurisdiction and scope of review by underpinning review to discovery of new and important matters or evidence, mistake or error on the face of the record and any other sufficient reason.
11. Section 80 of the Civil Procedure Act states 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 on the other hand provides as follows: -

“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 judgement to the court which passed the decree or made the order without unreasonable delay.”



13. The principles on whether or not to set aside an order for dismissal were outlined in the case of *Shah vs Mbogo* (1967) EA 166. The Court of Appeal held that it is a matter of discretion and the courts should exercise this discretion in a manner intended to avoid injustice or hardship resulting from an accident, inadvertence or mistake but it is not designed to assist a person to deliberately sought evasion, obstruction or delay the cause of justice. Thus, the onus is on the applicant seeking such orders to demonstrate sufficient reasons to warrant the exercise of discretion in their favor.
14. Further, the Court of Appeal in the case of *Sanitam Services (E.A.) Limited V Rentokil (K) Limited & Another* (2019) eKLR, held that:-
- “Jurisdiction to review a judgment or order of a court is donated by Section 80 of the *Civil Procedure Act* and Order 45 Civil Procedure Rules. By those provisions of law any person considering himself aggrieved by a decree or order from which an appeal is allowed but from which no appeal has been preferred or is aggrieved by a decree or order by which no appeal is 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 – a person who fits within those categories may apply for a review of judgment or to the court which passed the decree or made the order and this should be done without unreasonable delay”.
15. The Applicant’s main ground for review is that the court failed to consider prayer No. 3 in the Notice of Motion Application dated 28/8/2024 which sought temporary injunction and instead considered prayer No. 4. He thus contends that prayer no. 3 in the ruling was stated as being spent without having been considered substantively.
16. Even though the applicant has not outrightly hinged his allegations on a particular ground as outlined under Order 45 Rule 1; the ground I find most applicable in this case is that there was an error apparent on the face of the record, which he has attributed to an alleged failure by the court to consider prayer No. 3 in the former application.
17. In defining what amounts to an error apparent on the face of the record; the court in the case of *Chandrakhant Joshibhai Patel -v- R* [2004] TLR, 218 held as follows: -
- “...must be such as can be seen by one who runs and reads, that is, an obvious and patent mistake and not something which can be established by a long drawn process of reading on points on which may be conceivably be two opinions.”
18. For avoidance of doubt, I wish to reproduce prayers No. 3 and 4 in the application dated 28/8/2024;
- “3. Thst the plaintiff/respondent, its servants, agents including the member of county assembly (MCA) Langas Ward, Uasin Gishu County one FRANCIS MUYA MWANGI, JENIFFER WAMBUI MAINA, COLLINS BARASA MANGENI or any other person whomsoever acting for the plaintiff/respondent or agents and/or followers of the MCA or members of the public from Langas, Eldoret or any other persons acting on instructions be restrained by a temporary injunction from trespassing onto, entering, disrupting operations of LANGAS RACECOURSE HEALTH CENTRE situate on L.R. No. Eldoret Municipality/ Block 14/1653 registered in the name of ELDORET CHURCHES URBAN PROJECT TRUST



FUND REGISTERED TRUSTEES pending ‘inter-partes’ hearing of this application.

4. That the plaintiff/respondent, its servants, agents including the member of county assembly (MCA) Langas Ward, Uasin Gishu County one FRANCIS MUYA MWANGI, JENIFFER WAMBUI MAINA, COLLINS BARASA MANGENI or any other persons whomsoever acting for the plaintiff/respondent or agents and/or followers of the MCA or members of the public from Langas Ward, Eldoret or any other persons acting on instructions be restrained by way of permanent injunction from trespassing onto, entering, disrupting operations of LANGAS RACECOURSE HEALTH CENTRE situate on L.R. No. Eldoret Municipality/ Block 14/1653 registered in the name of ELDORET CHURCHES URBAN PROJECT TRUST FUND REGISTERED TRUSTEES pending hearing of this suit.”
19. A plain reading and understanding of prayer No. 3 above that the applicant sought court to grant orders of temporary injunction pending the hearing of the application inter-partes, the same was not granted. It therefore follows that at the time of issuing my ruling on 3rd October, 2024, prayer no. 3 had already been overtaken by events and hence spent. Consequently, I find the assertion by the applicant that this court failed to consider prayer No. 3 false and misguided.
20. An order for review and/or setting aside is discretionary in nature and as stated hereinabove, such discretion ought not to be exercised in favor of an undeserving party. The question that follows is whether the applicant has satisfactorily proved the principles that govern the grant of orders of review of a court order to the required threshold.
21. I have carefully considered the grounds outlined in the application and the allegations made in the supporting affidavit; other than the issue on prayer no. 3 in the former application, and which I have dealt with above, the applicant has not demonstrated any mistake or error apparent on the face of the record or any other sufficient reason to warrant the review of the orders of this court issued on 3/10/2024.

Conclusion:

22. In view of the foregoing, I accordingly find that the Application dated October 4, 2024 is not merited and is hereby dismissed with no orders as to costs.

It is so ordered!

DATED, SIGNED and DELIVERED in ELDORET this 19TH day of DECEMBER, 2024.

E. O. OBAGA

JUDGE

Ruling delivered in the virtual absence of Applicant’s counsel who was aware of the date for ruling.

Court Assistant – Laban

E. O. OBAGA

JUDGE

19TH DECEMBER, 2024

