



**Mukin Limited v Kenya Electricity Transmission Company (Environment & Land  
Petition 10 of 2017) [2023] KEELC 15970 (KLR) (28 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 15970 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND PETITION 10 OF 2017  
MN GICHERU, J  
FEBRUARY 28, 2023**

**BETWEEN**

**MUKIN LIMITED ..... RESPONDENT**

**AND**

**KENYA ELECTRICITY TRANSMISSION COMPANY ..... APPLICANT**

**RULING**

1. This ruling is on the Notice of Motion dated January 19, 2022. It is brought under Order 51, Rule 1, 45, Rule 1, [Civil Procedure Rules](#), Sections 1A, 1B, 3A and 63(e) of the [Civil Procedure Act](#) and all other enabling provisions of the law.
2. The motion seeks one prayer namely;
  - i. Review/setting aside of the orders dated November 10, 2021 by the Honourable Justice Christine Ochieng and
  - ii. Costs of the application.
3. The motion is supported by three (3) grounds, a supporting affidavit by Alfred Ochieng Opiyo advocate and two annexures.

The gist of the above material is that there is an error apparent on the face of the record in that the taxed costs emanate out of an advocate –client bill of costs and not party and party bill of costs and thus should not be visited upon the Applicant.
4. The motion is opposed by the Respondent whose counsel, Vincent Odhiambo, has sworn a replying affidavit dated February 4, 2022 which has seven annexures. In summary counsel deposes as follows.

Firstly, he says that the application is fatally incompetent and incurably defective for failing to annex the ruling, order or decree sought to be reviewed.



Secondly, it is the Respondent's contention that the application has not been brought timeously because it is more than 70 days between November 10, 2021 and January 19, 2022 when the application was filed.

Thirdly, the application is an appeal which is disguised as an application for review. In this regard counsel urges the court to note that the arguments advanced in the current application are a mere rehash of the Ketraco's averments in its replying affidavit of July 22, 2020.

5. Counsel for the parties filed written submissions on February 24, 2022 and March 22, 2022. The Petitioner has identified one issue for determination namely – whether Ketraco has met the legal threshold for review of the ruling dated November 10, 2021. On the other hand, the Respondent has identified the same issue and added a second one namely - whether the Applicant should shoulder the Respondent's advocate – client bill of costs.

6. I have carefully considered the notice of motion in its entirety including the affidavits, grounds, annexures, submissions, the law cited by the parties including statutes and case law.

Before I decide on the issues, I will decide on the other issues raised in the replying affidavit dated February 04, 2022.

7. Firstly, I do not agree that the application is defective for failure to annex the ruling dated November 10, 2021. There is no legal requirement that I know of that requires such annexure. The ruling being a ruling of this court and being on record, it is not mandatory that it be annexed to the current application.

8. Secondly, I do not find that the current application is not brought timeously. It should not be forgotten that time stops running in late December to early January for a period of more than two weeks. It is therefore not correct to say that it was filed more than 70 days since the date of the ruling.

9. Thirdly, I find that it was incumbent upon the Respondent in this case to point out the exact error apparent on the face of the record and then prove it. The error should have been made by the court and should be obvious. Once it is pointed out by the party relying on it, then the court should readily agree.

As per the authority cited by the counsel for the Respondent at page 4 of their submissions dated March 21, 2022, *Muhammed Mungai –versus- Ford Kenya Election, and Nominations Board and another* Miscellaneous Application Number 53 of 2013. "...where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out.

An error which has been established by long drawn process of reasoning or on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is possible one, it cannot be an error on wrong view is certainly no ground for a review although it may be for an appeal..."

10. The contention by the Respondent is simply that they should not be made to pay the costs between the Petitioner and its advocates. In the ruling dated November 10, 2022, Judge Ochieng dealt at length with the Respondent's participation in the taxation holding that they were estopped from claiming that they were not parties thereto for failure to challenge it as per the Rule 11 of the Advocates Remuneration order. I do not see any error from that ruling that is staring at me in the face.



11. On the issue of the Respondent shouldering the Petitioner's advocate client bill, I find that it should because it is in the deed of settlement dated April 7, 2017 at paragraph 2. This Deed of Settlement is a consent between the two parties herein.
12. For the above stated reasons, I find that the notice of motion does not meet the threshold for review in Order 45, Rule 1, *Civil Procedure Rules*. I dismiss it with costs to the Petitioners.

It is so ordered.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 28<sup>TH</sup> DAY OF FEBRUARY, 2023.**

**M.N. GICHERU**

**JUDGE**

