



St John Chrisootom Kudho Sec School v Jen Jack General Supplies (Civil Appeal E062 of 2024) [2025] KEHC 11294 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11294 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E062 OF 2024**

A MABEYA, J

JULY 31, 2025

BETWEEN

ST JOHN CHRISOOTOM KUDHO SEC SCHOOL APPELLANT

AND

JEN JACK GENERAL SUPPLIES RESPONDENT

RULING

1. This ruling determines the Notice of Motion dated 13/01/2025. The same was brought by the appellant under the provisions of section 3A & 80 of the [Civil Procedure Act](#), Order 42 rule 8, Order 45 rule 1 and Order 51 of the Civil Procedure Rules 2010.
2. The appellant seeks review of the judgment and orders made on the 14/11/2024 that dismissed the appeal for want of prosecution on the grounds that the appellant had not filed submissions as the court could not trace them on the CTS.
3. That the decision by the court was actuated by an error/mistake apparent on the face of the record as the appellant's submissions were on record having been filed on the 27/08/2024 and the same received and actioned by the registry on the 28/08/2024.
4. That in addition to filing the submissions in the CTS system, the appellant sent soft copies of the submissions of the appeal to the Court availed email, annextures@gmail.com on the 27/08/2024 and receipt acknowledged on 28/08/2024.
5. That the appellant stands to suffer substantial loss and irreparable damage as the respondent may proceed to commence execution and further as it has been condemned unheard.
6. In response, the respondent filed a replying affidavit sworn by Jacinter Awino Ouso on the 10/03/2025. She stated that there had been an inordinate delay in filing of the application which was inexcusable on the part of the appellant who had not given any reason for the delay.



7. From the record, the only issue for determination is whether there is a mistake or error on the face of the record to justify review of the judgment herein.
8. Under section 80 of the *Civil Procedure Act* and order 45 rule 1 of the Civil Procedure Rules, the court may review its decision, inter alia, on account of some mistake or error apparent on the face of the record, or upon discovery of new evidence that was not available at the time the order was made or decree passed or for any other sufficient reason.
9. An error or mistake apparent on the face of the record is one that is self-evident and does not require elaborate arguments to be established. See *Paul Mwaniki v NHIF Board of Management* [2020] eKLR.
10. In the present case, at paragraphs 10 and 12 of the judgment, the Court stated as follows: -

“The appellant however, did not file any submissions to prosecute its appeal as at the time that I am writing this judgement, I have checked in the Case Tracking System and found no submissions ...

Accordingly, as it is not the duty of this court to prosecute the appeal for the appellant and neither can the respondent do so, I find the appeal not prosecuted and proceed to dismiss it.”
11. I have considered the record. It is clear that the appellant’s submissions were on record having been filed on the 27/08/2024 and the same received and actioned by the registry on the 28/08/2024. Further, the appellant had sent soft copies of the submissions to the Court availed email, annextures@gmail.com on the 27/08/2024.
12. When the matter came up for mention on the 23/09/2024, Counsel for the appellant informed the Court that they had filed submissions but were yet to be served with those of the respondents.
13. From the record it is clear that the Court made an error that is so glaring that there can possibly be no debate about it in dismissing the appellant’s suit.
14. Consequently, I find that the appellant has met the threshold for the grant of the orders of review. Accordingly, the application dated 13/01/2025 is found to have merit and is hereby allowed as prayed.
15. Each party to meet its own costs of the application.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 31ST DAY OF JULY 2025.

A. MABEYA, FCI Arb.

JUDGE

