



Skynet Media (K) Limited v County Government of Taita Taveta (Miscellaneous Civil Application E038 of 2023) [2024] KEHC 1805 (KLR) (27 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1805 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS CIVIL APPLICATION E038 OF 2023
GMA DULU, J
FEBRUARY 27, 2024**

BETWEEN

SKYNET MEDIA (K) LIMITED APPLICANT

AND

COUNTY GOVERNMENT OF TAITA TAVETA RESPONDENT

RULING

1. Before me is an application by way of Notice of Motion dated 18th October 2023 filed under Order 51 Rule 1 and Order 10 rule 11 of the Civil Procedure Rules 2010, as well as Section 1A and 1B of the Civil Procedure act (Cap.21), and also Order 45 Rule 1 of the Civil Procedure Rules and Section 80 of the Civil Procedure Act.
2. The prayers in the application are as follows:-
 1. (Spent).
 2. The High Court be pleased to review, revise and vary orders and set aside the ruling delivered on 18th October 2023 by the Judge of the High Court at Voi Law Courts dismissing the applicants application dated 7th July 2023 seeking extended leave to file suit out of time.
 3. The court be pleased to allow, reinstate and revive the applicant's Miscellaneous Application E038 of 2023 which arose from Miscellaneous Application E003 of 2022 at Chief Magistrate's Court at Voi Law Courts dated 6th March 2023 seeking review of orders to grant extended leave to file suit out of time and comply with orders issued by the Hon. Chief Magistrate at Voi Law Courts on 6th June 2022 to file and serve the respondent within seven (7) days or even within two (2) days.
 4. The High Court be pleased to after allowing the application, grant the applicant extended leave to file suit out of time and serve upon the respondent to comply with orders issued by the Hon.



Chief Magistrate's Court at Voi Law Courts on 6th June 2022 to file and serve the respondent within seven (7) days for fair hearing and determination because the amount involved is Kshs. 8,598,955/=

3. The application has grounds on the face of the Notice of Motion that the cause of action arose on 25th February 2016 as the respondent in utmost defence of the rule of law re-advertised an already awarded supply and delivery of mobile library on 6th /7th February 2016 in Star Newspaper, which the contract had been awarded in 2015 and delivery effected on 4th August 2015 as indicated in LPO Number 2272879 dated 30th June 2015, and several delivery notes issued; that efforts by the applicant to seek payment of Kshs. 8,598,955/= were futile and difficult as the respondent did not respond to all demands including the advocates letter dated 26th February 2016, from Muthami & Company Advocates, that in February 2022 the applicant instructed and fully paid Mutinda & Company Advocates, the last day of orders issued by the Chief Magistrate to file and serve the respondent (sic); that the unfortunate delay was occasioned by a medical emergency which the director was attending at Muhimbili hospital Dar-es-Salaam and the advocate was engaged in several matters in court and it was too late to meet the deadline, that the applicant thereafter instructed Machora Motuka & Company Advocates and paid instruction fees but the counsel on 13th April 2023 deliberately did not attend the hearing before the Chief Magistrate, and that the applicant should not suffer or be denied justice for errors, failures and mistakes of advocates.
4. The application was filed with a supporting affidavit sworn by Hezron Mutua Mwawaza Obadiah a director of the applicant on 18th October 2023 which amplifies the grounds of the application. The affidavit attaches various documents, which are not marked as an annexure to it, and thus do not form part of the affidavit.
5. The application has been opposed through Grounds of Opposition as follows:-
 1. That the application is incompetent and an abuse of the court process as it violates mandatory provisions of the law.
 2. That the application does not meet the threshold for grant of review orders.
 3. The application offends the provisions of section 80 of the *Civil Procedure Act* (Cap.21) read together with Order 45 of the *Civil Procedure Rules* 2010.
 4. That the application is very bad in law and therefore ought to be dismissed with costs at the very first instance.
6. The application was canvassed through written submissions, and in this regard, I have perused and considered the submissions filed by the applicant as well as the submissions filed by Mwazighe & Company Advocates for the respondent. Both sides relied upon decided court cases.
7. In response to the respondent's submissions, the applicant purported to file a replying affidavit sworn on 30th October 2023 without leave of this court. That affidavit is thus improperly in the file, and I strike it out.
8. This is an application asking this court to review its own orders, as this court had on 18th October 2023 declined to review the Magistrate's court orders, the subject of this present application.
9. As such, the application is governed by the provisions of Section 80 of the *Civil Procedure Act* (Cap.21), and Order 45 of the *Civil Procedure Rules* 2010. Section 80 provide as follows:-

“ 80. 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 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.”

10. With regard to Order 45, it provides as follows:-

45 (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 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 review of the judgment to the court which passed the decree or made the order without unreasonable delay.”

11. The decision sought herein to be reviewed, is the decision of this court delivered in a ruling dated 18th October 2023. So the question is, is there any new and important evidence which existed at the time of the ruling to justify this court to consider reviewing its earlier decision. Secondly, or conversely is there any error apparent on the face of the ruling, or sufficient reason for this court to exercise its review jurisdiction.

12. The burden was on the applicant to demonstrate to this court the legal and factual basis or reasons for this court to exercise its discretionary review jurisdiction.

13. In my view, from the pleadings herein, as well as the submissions filed, the applicant has not placed himself within the legal parameters that would enable this court to exercise its revision powers. He has not demonstrated or shown discovery of any new and important evidence which existed at the time of delivery of the subject ruling which he could not have been able to use, to justify his request for review of the ruling. He has also not demonstrated any error apparent on the face of the record or the ruling, nor has he demonstrated any other sufficient reason for the requested revision or review orders.

14. In my view, merely claiming that the subject matter was a purported tender of more than Kshs. 8,000,000/= does not help him, as proof of the tender would be subject to evidence being tendered in court. In addition, the applicant was actually granted by the court, a number of extensions of time to file and prosecute his alleged contractual claim, but failed to do so.

15. Further, his contention in this application that he paid several advocates to pursue his claim but the said advocates failed to do so, also does not help him, as his relationship with his advocates is confidential. His option is to pursue the said advocates legally for professional negligence if he so wishes, and not to come to this court to review its earlier ruling or decision.

16. I thus find the application unmerited. I dismiss the application for review, with costs to the respondent.

DATED, SIGNED AND DELIVERED THIS 27TH DAY OF FEBRUARY 2024 AT VOI IN OPEN COURT VIRTUALLY.

GEORGE DULU



JUDGE

In the presence of:-

Alfred – Court Assistant

No appearance for applicant

Mr. Mwazighe for respondent

