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COURT OF APPEAL CONFIRMS POWER TO REOPEN ITS OWN JUDGMENTS IN THE INTEREST OF JUSTICE

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In a significant decision delivered on **9 June 2023**, the **Court of Appeal of Kenya** in ***Mwambeja Ranching Company Ltd & another v Kenya National Capital Corporation (Civil Appeal (Application) 30 of 2018) [2023] KECA 660 (KLR)***, reaffirmed its position that—despite the doctrine of finality in litigation—it retains a residual jurisdiction to reopen or review its own judgments in exceptional and compelling circumstances.

This marks a continuation of the jurisprudential shift that balances the principle of finality with the overriding objective of ensuring substantive justice.

HISTORICAL CONTEXT AND LEGAL EVOLUTION

Initially, in ***Rafiki Enterprises Ltd v Kingsway & Automart Ltd (1996)***, the Court held that it had no power to review its own decisions. However, this position was reconsidered in 2005 in Musiara Ltd v Ntimana and Chris Mahinda v Kenya Power & Lighting Co. Ltd, where the Court recognized a residual or inherent jurisdiction to reopen matters, especially in the event of judicial bias or grave injustice.

That position was briefly reversed in ***Jasbir Singh Rai v Tarlochan Singh Rai (2007)***, which reasserted finality. However, the tide turned again post-2010 with notable rulings such as:

- **Nguruman Ltd v Shompole Group Ranch (2014)** – emphasizing the right to a fair hearing;
- **Benjoh Amalgamated Ltd v KCB (2014)** – reinforcing fairness and justice;
- **Standard Chartered Financial Services Ltd v Manchester Outfitters** – asserting that fairness prevails over finality;

- **Kamau James Gitutho v Multiple ICD Ltd (2019)** – affirming residual jurisdiction, but to be used cautiously.

GUIDING PRINCIPLES FROM THE MWAMBEJA RULING

In Mwambeja Ranching, the Court confirmed that residual jurisdiction exists to cure grave procedural or substantive injustices, but must be:

- Sparingly exercised,
- Carefully confined, and
- Reserved for compelling circumstances.

Referencing Sir Jack Jacob's authoritative commentary on inherent jurisdiction, the Court defined residual powers as those drawn upon when it is necessary to:

"...ensure the observance of the due process of law, prevent vexation or oppression, do justice between the parties and secure a fair trial."

WHEN CAN THE COURT REOPEN A FINAL DECISION?

According to the Court's restatement in AVH Legal LLP v Raballa & 8 Others (2023), the following exceptional grounds justify reopening a matter:

- The judgment was obtained by fraud or deceit;
- The judgment is a nullity;
- The judgment was made under a mistaken belief of consent by the parties;
- The Court lacked jurisdiction;
- The proceedings undermined the legitimacy of the judgment; or
- The decision was rendered with a fundamental procedural irregularity.

Importantly, mere dissatisfaction or a desire for rehearing does not qualify. The burden lies with the applicant to show that circumstances exist which compel the Court to depart from the principle of finality.

WHAT THIS MEANS FOR YOU

This ruling is a welcome reaffirmation that the pursuit of justice remains paramount in Kenya's appellate framework. However, parties must be cautious and strategic—only truly exceptional and substantiated applications will be entertained.

For corporate clients, litigants, or counsel with ongoing or concluded matters that may meet the threshold for review, early legal analysis is essential to preserve your rights and ensure compliance with strict procedural standards.

HOW CM ADVOCATES LLP CAN HELP

Our Dispute Resolution & Appellate Practice Group is uniquely positioned to guide you through this complex legal landscape.

We offer strategic support through:

- **Case Reviews & Risk Assessments:** Assessing whether a decided matter qualifies for review based on facts, procedural history, and jurisprudence.
- **Separate Representation in Appeals:** Advising or representing clients independently from prior trial counsel—especially where a fresh appellate strategy is needed to overcome earlier missteps or conflicts.

- **Appellate Litigation Management:** Handling urgent stay applications, interlocutory relief, and formal applications for reopening judgments.
- **Post-Judgment Remedies:** Including constitutional petitions, applications for clarification, and engagements with judicial authorities where systemic failure or procedural unfairness is evident.
- **Precedent Mapping & Judicial Trend Analysis:** Leveraging recent jurisprudence to frame persuasive applications grounded in legal realism and judicial practice.
- **Cross-border Coordination:** For clients involved in regional disputes, we provide harmonized legal support across EAC jurisdictions where residual jurisdiction concepts may be relevant.

With a multi-disciplinary bench of experienced advocates, judicial review specialists, and legal researchers, CM Advocates LLP delivers tailored solutions with a results-oriented approach.

CONTACT OUR TEAM TODAY

If you believe your matter may fall within the scope of this clarified jurisdiction—or if you require a strategic reassessment of your appeal or post-judgment options—we encourage you to engage our team at your earliest convenience.

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