



Wanjohi & another v Francis Mwangi Mugo & another ((Suing as the Administrator of the Estate of the Late William Ndungu Mwangi - Deceased)) (Civil Appeal E349 of 2021) [2023] KEHC 1199 (KLR) (Civ) (24 February 2023) (Ruling)

Neutral citation: [2023] KEHC 1199 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E349 OF 2021

JK SERGON, J

FEBRUARY 24, 2023

BETWEEN

JOSEPH WANJOHI 1ST APPELLANT

FRANK JOSEPH WAMAITHA 2ND APPELLANT

AND

FRANCIS MWANGI MUGO & MARY NJERI NDUNGU (SUING AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE WILLIAM NDUNGU MWANGI - DECEASED) RESPONDENT

(SUING AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE WILLIAM NDUNGU MWANGI - DECEASED)

RULING

1. The appellant herein has brought the Notice of Motion dated July 25, 2022 supported by the grounds laid out on its face and the facts stated in her affidavit. The applicant sought for the following orders:
 - i. Spent
 - ii. Spent
 - iii. That this Honourable Court do review/vary the conditions for stay of execution granted by the Honourable Judge on June 17, 2022 that the appellant/applicant do deposit the entire decretal sum specific to this matter within the next 45 days from the date of ruling.
 - iv. That this Honourable court allow the appellant/applicant to furnish security of Kshs 3,000,000/= which is the statutory limit for Insurance companies as per [CAP 405](#).



- v. That this Honourable court be pleased to enlarge time within which the appellants should comply with the court orders issued on June 17, 2022 and/or vary the said orders.
 - vi. That this Honourable Court allow the appellant/applicant to furnish security of Kshs 3,000,000/= which is the statutory limit for insurance companies.
 - vii. That the application be heard inter parties on such date and time as this Honourable Court may direct.
2. The application was based on the grounds on the face of the Motion and on the supporting affidavit of Harriet A Sang sworn on July 25, 2022.
 3. The application was unopposed.
 4. A brief background of the matter is that the respondents instituted a suit before the Chief Magistrate's Court-Milimani Commercial Courts, against the appellants and sought for the general and special damages of Kshs 7,740/= plus costs of the suit and interest thereon, arising from a fatal road accident.
 5. Upon hearing the parties, the court vide the judgment delivered on June 11, 2021 awarded the respondents an aggregate sum of Kshs 5,257,740/= as damages plus costs of the suit and interest at court rates and holding the applicants 100% liable. Being aggrieved by the aforementioned decision, the applicants appealed to this court against the lower court's judgment.
 6. The applicants subsequently approached this court by way of the application dated February 14, 2022 and sought for an order of a stay of execution pending the appeal.
 7. This court heard the application and granted the order for stay on condition that the applicants deposit the entire decretal sum in an interest earning account in the joint names of the advocates or firms appearing in this appeal within 45 days.
 8. The applicants now seek to review the above ruling through the instant Motion.
 9. The applicants aver that it is impossible for the their Insurance Company i.e. Direct line Assurance Company to fully comply with the stay conditions that were issued by the Court as the insurer can only provide part of the decretal sum of Kshs 3,000,000/= which is the statutory limit for insurers under [CAP 405](#).
 10. The applicants further aver that the court to enlarge the time within which they should deposit Kshs 3,000,000/= in a joint account to be held by both advocates as directed by the court and the same can be availed in court within 30days.
 11. The germane principles to guide this court in deciding whether to review its earlier ruling are found under Order 45 of the [Civil Procedure Rules](#), 2010 and reaffirmed under Section 80 of the [Civil Procedure Act](#) Cap 21 Laws of Kenya, both cited in the submissions by the appellants, and set out in the manner below:

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

12. The following are the instances in which a court can review a decision already in place:
 - a. the discovery of new and important matter or evidence, or
 - b. some mistake or error apparent on the face of the record, or
 - c. any other sufficient reason.
13. From my study of the instant Motion, it is clear that the applicants are relying on any other sufficient reason being that the insurance Company can only provide the sum of Kshs 3,000,000/= which is statutory limit for any insurance company in respect of claims arising from accidents of their insureds.
14. In *Sadar Mohamed vs Charan Signh and Another* [1963}EA 557.] that:-

“Any other sufficient reason for the purposes of review refers to grounds analogous to the other two (for example error on the face of the record and discovery of new matter).”
15. In *Tokesi Mambili and others vs Simion Litsanga* [2004} eKLR.] the Court of Appeal held:-
 - i. In order to obtain a review an applicant has to show to the satisfaction of the court that there has been discovery of new and important matter or evidence which was not within his knowledge or could not be produced at the time when the order to be reviewed was made. An applicant may have to show that there was a mistake or error apparent on the face of the record or for any other sufficient reason. (Emphasis added)
 - ii. Where the application is based on sufficient reason it is for the Court to exercise its discretion.
16. I am persuaded that the reasons offered by the applicants’ amounts to ‘sufficient reason’ within the meaning of the rules cited above nor is it analogous or ejusdem generis to the other reasons stipulated in Order 45 Rule 1. My finding is fortified by the holding in the case of *Evan Bwire vs Andrew Nginda* Civil Appeal No 103 of 2000, Kisumu, (2000) LLR 8340, t where the court held that ‘an application for review will only be allowed on very strong grounds particularly if its effect will amount to re-opening the application or case a fresh.
17. Guided by the jurisprudence discussed above, it is my finding that the reasons cited by the applicants do qualify to be of the grounds prescribed in Order 45 Rule 1 of the [Civil Procedure Rules](#).
18. In view of my above conclusions, I find that the grounds cited do qualify to be grounds for review to bring the applicant’s application within the ambit of the grounds specified in Order 45 Rule 1. It is my finding that this is a proper case for the court to grant the review sought or even to exercise its discretion in favour of the applicant.
19. Accordingly, the applicant’s application dated July 25, 2022 is found to be meritorious. It is allowed thus giving rise to issuance of the following orders:
 - i. The appellant/applicant to furnish security of Kshs 3,000,000/= which is the statutory limit for Insurance companies as per CAP 405 within 30 days failure to which the orders of stay will be vacated.
 - ii. Costs of the Motion shall abide the outcome of the appeal.



DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS
24TH DAY OF FEBRUARY, 2023.

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the 1st Appellant

..... for the 2nd Appellant

..... for the Respondent

