



**Eagle Group International Limited & 2 others v Hamisi (Civil Appeal  
E723 of 2021) [2022] KEHC 13006 (KLR) (Civ) (23 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13006 (KLR)

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

**CIVIL**

**CIVIL APPEAL E723 OF 2021**

**JK SERGON, J**

**SEPTEMBER 23, 2022**

**BETWEEN**

**EAGLE GROUP INTERNATIONAL LIMITED ..... 1<sup>ST</sup> APPELLANT**

**AGBEKO ERIC ..... 2<sup>ND</sup> APPELLANT**

**MENSAH BAFFOUR KYEI ..... 3<sup>RD</sup> APPELLANT**

**AND**

**HADIJA CHERUTO HAMISI ..... RESPONDENT**

**RULING**

1. The respondent herein has brought the Notice of Motion dated 24<sup>th</sup> February, 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. That this Honourable Court be pleased review the orders issued on 4<sup>th</sup> February, 2022 by taking into account the response filed in opposition to the application and compelling the appellants to provide security for due performance of the decree in MCCC No. 3637 of 2019.
  - iii. That costs of the application be provided for.
2. The appellants resisted the Motion by putting in the replying affidavit sworn by the 2<sup>nd</sup> appellant on 29<sup>th</sup> June, 2022.
3. At the interparties hearing of the instant Motion, this court gave directions for the parties to file and exchange written submissions.



4. I have considered the grounds set out on the face of the Motion together with the facts deponed in the affidavits supporting and opposing the Motion and the rival submissions plus the authorities cited in reliance thereto.
5. A brief background of the matter is that the respondent instituted Civil Case No. 3637 of 2019 before the Chief Magistrate's Court-Milimani Commercial Courts, against the appellants vide the plaint dated 21<sup>st</sup> May, 2019 and sought for the sum of Kshs.6,550,000/= plus costs of the suit and interest thereon.
6. Going by the averments made by the parties, the hearing proceeded ex parte, paving way for the filing of submissions.
7. According to the parties, the appellants filed an application and sought to have the orders closing their case reviewed and the case re-opened to enable them defend the claim, and which application was dismissed by way of the ruling delivered on 16<sup>th</sup> September, 2021.
8. The appellants subsequently approached this court by way of the application dated 2<sup>nd</sup> November, 2021 and sought for leave to appeal out of time against the aforementioned ruling, and for an order of a stay of execution pending the appeal.
9. This court heard the application ex parte and allowed it vide the ruling delivered on 4<sup>th</sup> February, 2022.
10. The respondent now seeks to review the above ruling through the instant Motion.
11. On her part, the respondent states and submits that not only did this court not have the opportunity to consider her response to the abovementioned application by the appellants, but that the appellants failed to disclose that the trial court rendered a judgment in the suit on 16<sup>th</sup> September, 2021 upon dismissing the appellants' application on 15<sup>th</sup> September, 2021.
12. The respondent further states and submits that the decree is monetary in nature with the appellants being ordered to pay the sum of Kshs.8,000,000/= to the respondent and hence this court ought to correct the error apparent on the face of the record by ordering the appellants to provide security for the due performance of the decree, citing the case of *Kenya Commercial Bank Ltd v Kungu* [2022] eKLR where the court held thus:

“What is important is that review proceedings must be limited to simple matters such as correction of errors apparent on the face of the record, discovery of new matters or evidence, and similar issues which do not require elaborate argumentation, and which are self-evident.

This is the gist of the Court of Appeal decision in Civil Appeal No. 211 of 1996, National Bank of vs Ndungu Njau where the Court held that:

A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established.”

13. In retort, the appellants state and submit that the respondent did not respond to or at all participate at the hearing of the application seeking an order for a stay of execution pending appeal, despite service of the said application and hearing notice being effected upon her.



14. The appellants therefore state and submit that no valid reasons have been brought forward to warrant a review of the orders in place and make reference to the authority of *National Bank Of Kenya v Ndungu Njau* [1996] KLR 469, where the Court of Appeal reasoned that:

“In my discernment, an order cannot be reviewed because it is shown that the judge decided the matter on a foundation of incorrect procedure and or that his decision revealed a misapprehension of the law, or that he exercised his discretion wrongly in the case. Much less could it be reviewed on the ground that the other judges of coordinate jurisdiction and even the judge whose order is sought to be reviewed have subsequently arrived at different decisions on the same issue? In my opinion the proper way to correct a judge’s alleged misapprehension of the procedure or the substantive law or his alleged wrongful exercise of discretion is to appeal the decision unless the error be apparent on the face of the record and therefore requires no elaborate argument to explore.”

15. 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.”

16. 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.

17. From my study of the instant Motion, it is clear that the applicant is relying on the principles of “error apparent on the face of the record.”

18. The Court of Appeal in the case of *National Bank Of Kenya Limited v Ndungu Njau* [1997] eKLR cited in the appellants’ submissions had the following to say regarding an error on the face of the record:

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established.”



- 19. From my perusal of the record, I note that while the respondent has laid claim as to the fact that she had put in a reply to the application dated 2<sup>nd</sup> November, 2021 there is nothing on the record to ascertain whether the same had been filed in good time and prior to delivery of the ruling on 4<sup>th</sup> February, 2022.
- 20. That notwithstanding, it is apparent from the averments made by the parties that the impugned judgment which was delivered by the trial court on 16<sup>th</sup> September, 2021 resulted in a monetary decree and hence a condition for the provision of security for the due performance of the decree would be mandatory for the granting of an order of a stay of execution.
- 21. Consequently, and for the foregoing reason, I am convinced that there is any error apparent on the face of the ruling delivered on 4<sup>th</sup> February, 2022 which would warrant a review of the same.
- 22. The upshot therefore is that the Notice of Motion dated 24<sup>th</sup> February, 2022 succeeds as prayed thus giving rise to issuance of the following orders:
  - i. The order made on 4<sup>th</sup> February, 2022 granting a stay of execution of the orders issued on 16<sup>th</sup> September, 2021 by the trial court is hereby set aside and is substituted with an order granting an order for stay of execution of the decree in the suit on the condition that the appellants deposit the entire decretal sum in an interest earning account to be held in the joint names of the parties' advocates and or firm of advocates within 45 days from the date hereof, failing which the order for stay shall automatically lapse.
  - ii. Costs of the application to abide the outcome of the appeal.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 23<sup>RD</sup> DAY OF SEPTEMBER, 2022.**

.....

**J. K. SERGON**  
**JUDGE**

**In the presence of:**

..... for the 1<sup>st</sup> to 3<sup>rd</sup> Appellants  
..... for the Respondent

