



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL APPEAL CASE NO. E227 OF 2020

GEORGE OUMA MIYARE.....APPELLANT/APPLICANT

VERSUS

PLANET MOTORS COMPANY LIMITED.....RESPONDENT

RULING

1. The application dated 25/3/2021 principally seeks orders **that the Honourable Court be pleased to review, vary and/or set aside its ruling/decision given herein on 4th March 2021 and the consequential orders.**
2. That **in the alternative, the Honourable Court be pleased to enlarge time for the depositing of security for a further 60 days.**
3. The application is based on the grounds set out in the application and the affidavit in support. It is stated that in the ruling herein dated 4/3/2021 in respect of the application dated 22/10/2020, the court made orders for the deposit of security in the sum of Kshs. 3,300,000/= in a joint interest earning bank account in the names of the Advocates for the parties or deposit security for the sum of Kshs. 5,000,000/=.
4. It is further stated that there is a mistake and/or error apparent on the face of the record as the case is still pending before the lower court; that there is no decree or any debt established that requires to be secured; that the order of security sets a wrong and unfair precedent; that the order takes away the Applicant's right to a fair trial and condemns the Appeal herein before it is heard. It is further asserted that the court has no discretion to make orders for deposit of security; that the Applicant has already given an undertaking not to dispose of the motor vehicle the subject of the suit and that there was no application before the court for the variation of the orders herein dated 8/10/2020.
5. The Applicant stated that he is unable to secure the security due to the harsh economic environment caused by the Covid-19 Pandemic. That the Applicant is gravely prejudiced by the said orders whereas no prejudice will be occasioned to the Respondent whose claim is liquidated and capable of being compensated in monetary terms rather than the attachment of the motor vehicle.
6. The application is opposed as per the replying affidavit filed herein. The Respondent's position is that there is no violation of the Applicant's right to a fair hearing and that the matter has dragged on due to the constant filing of applications by the Applicant. That the impugned ruling balanced the interests of the parties and that there is no error or mistake on the face of the record nor any new and important matter. It is further stated that the issues raised herein were the same issues canvassed before the court made the ruling.
7. I have considered the application, the response and the rival submissions filed herein.
8. Under Order 45 rule 1 (1) of the Civil Procedure Act provides:

“1. (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 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.”

9. As stated by the Court of Appeal in the case of **Mwihoko Housing Co. Ltd v Equity Building Society [2007]eKLR:**

“It is trite law, and we reiterate, 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. It will not be a sufficient ground of review that another Judge could have taken a different view of the matter. Nor can it be a ground of review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review. See Nairobi City council v Thabiti Enterprises Ltd [1995-98] 2 EA 251 (CAK).”

10. This court’s view is that the matters raised by the Applicant are not errors or omissions that are self-evident but are matters that require elaborate explanations. They are not errors that are apparent on the face of the record. The reasons given by the Applicant amount to grounds of Appeal. There are no sufficient reasons given to warrant a review.

11. The deposit of security was to be made within 30 days of the ruling. In default the application dated 22/10/2020 was to stand as allowed. The application at hand was filed before the lapse of the 30 days. No prejudice is likely to be visited on the Respondent if the extension of time is allowed.

12. With the foregoing, the application for review fails. The time within which to deposit security is extended for 30 days from the date hereof. Costs in cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF JULY, 2021

B.THURANIRA JADEN

JUDGE