



REPUBLIC OF KENYA



**KENYA LAW**  
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**Noorani & another v Sanghani (Civil Case 398 of 2018)  
[2021] KEHC 412 (KLR) (Commercial and Tax) (16 December 2021) (Ruling)**

Neutral citation: [2021] KEHC 412 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE 398 OF 2018  
WA OKWANY, J  
DECEMBER 16, 2021**

**BETWEEN**

**AHMED NOORANI ..... 1<sup>ST</sup> PLAINTIFF**

**SCHON AHMED NOORANI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**RAJENDRA RATILAL SANGHANI ..... DEFENDANT**

**RULING**

1. This ruling is in respect to the application dated 16<sup>th</sup> July 2021 wherein the Plaintiffs /Applicants seek orders that: -
  1. Spent.
  2. That pending the hearing and determination of this application inter-partes the court be pleased to issue a temporary injunction and/or status quo orders restraining the following companies and/or their agents and/or directors from transferring shares, paying out any dividends or monies on account of shares held by RAJENDRA RATILAL SANGHANI to wit; REAL MANAGEMENT SERVICES [2002] LIMITED, REAL COURT LIMITED, FIONA INVESTMENTS LIMITED, GUT VENTURES LIMITED, SHIVALI HOLDINGS LIMITED, JYOTIN INVESTMENTS LIMITED AND GRANADA TRADING COMPANY LIMITED.
  3. That the Honourable Court be pleased to review and thereof set aside the ruling/and or orders issued on 8<sup>th</sup> July 2021.



4. That the Honourable court do proceed to consider and determine the application dated 26<sup>th</sup> November 2021 on its merits in light of the already filed submissions by the parties herein.
  5. That the court do issue a ruling date for the application dated 26<sup>th</sup> November 2021.
  6. That the costs of the application be in the cause.
2. The application is supported by the 2<sup>nd</sup> applicant's affidavit and is premised on the grounds that: -
- a. The Honourable court issued a ruling on 8<sup>th</sup> July 2021 wherein the Applicants' Notice of Motion was dismissed.
  - b. The reasoning of the court was predicated on non-filing of an affidavit of service by the applicants.
  - c. The court overlooked, inadvertently, the existence of the affidavit of service dated and filed on 2<sup>nd</sup> February 2021 which affidavit was to referred at page 3 paragraph 13 of the applicants' submissions dated 2<sup>nd</sup> February 2021.
  - d. Accordingly, there is an apparent mistake or error of omission on the face of the record.
  - e. The application has been filed timeously and without undue delay.
  - f. The omission by the court in reference to the affidavit of service was not the applicants' doing.
  - g. It is the interest of justice that the application be decided on merits as opposed to technicalities as is evident in the said ruling.
3. The respondent opposed the application through the replying affidavit sworn on 18<sup>th</sup> August 2021 wherein he avers that the power to review only arises if the court makes a mistake and that the failure of the e-filing system and/or the judiciary staff to avail the purported affidavit of service in the court file was not a mistake of the court to warrant the court to invoke its review powers. He further states that the Applicants needed to ensure that all their pleadings were on the court record, in which case, the alleged mistake is largely attributable to the Applicants.
4. The respondent avers that the Applicant have been in a hurry to execute the decree of this Court by way of attachment and sale of movable properties and by attachment of shares to recover the entire decretal sum but that they have never applied to cash the post-dated cheques that he had issued to them as means of execution. He adds that the Applicants are malicious and that their intention is to have these cheques dishonoured and thereafter accuse him of issuing fake and/or dishonoured cheques so that he can be criminally charged in court. He accuses the applicants of engaging in parallel execution processes at the same time, and for violating the terms of the judgment that forms the basis of the current execution process.
5. Parties canvassed the application by way of written submissions which I have carefully considered. The main issue for determination is whether the applicants have made out a case for the granting of orders to review the ruling and/or orders of 8<sup>th</sup> July 2021. In the impugned ruling, this court struck out the applicants' application dated 26<sup>th</sup> November 2020 on the basis that the applicants had not demonstrated that they had effected service of the said application on the affected companies.



6. Order 45, Rule 1(b) of the *Civil Procedure Rules* grants the court the power to review its decision in the following terms: -

“(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.

- (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.”

7. The aforesaid rule is based on section 80 of the *Civil Procedure Act* which states as follows: -

“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 a 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.

8. A simple reading of the above provisions reveals that the court has unfettered discretion to review its orders as it thinks fit on sufficient reason being provided. Like all other discretionary orders, the discretion to grant orders for review must be exercised judiciously and not capriciously. The grounds upon which a party may seek an order for review under Order 45 Rule 1(b) can be summarized as follows: -

- a. On 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,
- b. or on account of some mistake or error apparent on the face of the record,
- c. or for any other sufficient reason. [ Emphasis added].

9. In the instant case, the applicants’ ground for seeking review was that the affidavit of service was not placed on the court file on time or at all thus leading to the striking out of the application for want of



service. The respondent, on the other hand, argued that there was no mistake apparent on the face of the impugned ruling so as to justify the granting of the order for review.

10. I have perused the affidavit of service by sworn by one Kelvin Mwendwa Patrick on 21<sup>st</sup> July 2021 and I note that, indeed, the directors of the companies owned by Judgment Debtor herein were duly served with the application dated 16<sup>th</sup> July 2021. I am satisfied that the applicants have established that there is sufficient reason to warrant the granting of the orders for review as the failure to place the affidavit of service on the court file was an inadvertence that cannot be attributed to the applicants' fault. I am guided by the decision in *Vijay Kumar Davalji Kanti Gobic -Vs- Suresh Mohanlal Fatania & 8 Others* [2013] eKLR where Odunga J. held that: -

“ Looking at the record as it is, one can only conclude that the failure by the court to deal with the issue of costs must have been due to inadvertence on the part of the court and in light of the provisions of Order 45 Rule 1 of the Civil Procedure Rules as read with Section 80 of the *Civil Procedure Act*, that would amount, in my view, to an error apparent on the face of the record. An error apparent on the face of the record, it has been held, cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case.”

11. Consequently, I allow the application dated 16<sup>th</sup> July 2021 as prayed and review/set aside the order striking out the application dated 26<sup>th</sup> November 2020 and in its place, substitute it with an order allowing the said application in terms of prayer 4 thereof.
12. I issue further orders directing the directors and/or agents of Real Management Services 2002 Limited, Real Court Limited, Fiona Investments Limited, Croydon Investments Limited, Twiga Properties Limited, Gut Ventures Limited, Shivali Holdings Limited, Jyotin Investments Limited and Granada Trading Company Limited to furnish the court with financial documents and list of assets of the Companies and an account of monies and/ or dividends or any form of payments due to Rajendra Ratilal Sanghani within 30 days from the date of this ruling.
13. Mention on 23<sup>rd</sup> March 2022 to confirm compliance.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT NAIROBI THIS 16<sup>TH</sup> DAY OF DECEMBER 2021 IN VIEW OF THE DECLARATION OF MEASURES RESTRICTING COURT OPERATIONS DUE TO COVID-19 PANDEMIC AND IN LIGHT OF THE DIRECTIONS ISSUED BY HIS LORDSHIP, THE CHIEF JUSTICE ON THE 17<sup>TH</sup> APRIL 2020.**

**W. A. OKWANY**

**JUDGE**

**In the presence of: -**

Mr. Maingi for Decree Holder

Mr. Makhoka for Judgment Debtor

Court Assistant: Margaret

