



**Recon Suppliers Limited v Koinange & 2 others; Royal Gardens Limited  
& 2 others (Interested Parties) (Environment and Land Miscellaneous  
Application E273 of 2022) [2023] KEELC 18998 (KLR) (19 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18998 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E273 OF 2022**

**JA MOGENI, J  
JULY 19, 2023**

**BETWEEN**

**RECON SUPPLIERS LIMITED ..... CLAIMANT**

**AND**

**BARBARA WAMBUI KOINANGE ..... 1<sup>ST</sup> DEFENDANT**

**HARRISON KIHARA T/A HARIKI AUCTIONEERS ..... 2<sup>ND</sup> DEFENDANT**

**PETER GICHUKI T/A GICHUKI KING'ARA & CO.**

**ADVOCATES ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**ROYAL GARDENS LIMITED ..... INTERESTED PARTY**

**ROYAL MATTRESSES ..... INTERESTED PARTY**

**POWER LIF KARDI EAST AFRICA LIMITED ..... INTERESTED PARTY**

**RULING**

1. Upon delivery of the ruling in this matter on 30/05/2023 the advocate for the 2<sup>nd</sup> Interested Party made an oral application for the court to review the decree issued on the even date since the exact value of the goods sold was provided in the Supplementary Affidavit and it was totaling Kesh 1,095,730 and not Kesh 462,530 as the court had stated in the ruling.
2. The advocate for the Respondent also made an oral application seeking stay of execution of the court orders, and the ground provided was that the court was mistaken in its pronouncement and this mistake could affect the freedom of the respondents. Further that the respondents were not aware of which order they disobeyed.



3. Further, the respondent filed another application dated 30/06/2023 seeking the following orders:
  - a. Spent
  - b. That pending inter partes hearing and determination of this application this honorable court be pleased to extend its orders issued on 30<sup>th</sup> May 2023 or grant such stay orders of the Ruling and orders of Court issued on 30<sup>th</sup> May 2023.
  - c. That pending the determination of the intended Appeal this honorable Court be pleased to extend its orders issued on May 30, 2023 or grant such stay orders of the Ruling and orders of Court issued on May 30, 2023 and varied.
  - d. That costs be in the cause.
4. The application is premised on the seventeen (17) grounds on the face of it and the supporting affidavit of Harrison Kihara the 2<sup>nd</sup> applicant trading as Hariki Auctioneers who contends that the order of the court dated 2/09/2022 was never served upon him. Further that the ruling by this court dated 30/05/2023 holding the 1<sup>st</sup> and 2<sup>nd</sup> applicants in contempt was not made known to them and that there was no court order they disobeyed.
5. That the applicant stands to suffer if they are held in contempt and that in arriving at its decision the court did not consider the applicant's issues and submissions. Further that the applicant has proffered an appeal which if stay is not granted will be rendered nugatory.
6. The application dated 30/06/2023 is opposed. The 1<sup>st</sup> Interested Party through a replying affidavit sworn administrator Susan Wanjiku Kihonge dated 4/07/2023 in opposing the application stated that the Applicant was granted a 30-day stay of execution of the ruling dated 30/05/2023 to facilitate filing of Appeal and he filed a Notice of Appeal dated 5/06/2023.
7. She avers that stay of execution for 30 days this court is now functus officio it cannot grant further order and the applicant needs to make their application to the Court of Appeal in line with order 5 rule 2 (b) of *Court of Appeal* 2010 Rules.
8. It is the contention of the 1<sup>st</sup> Interested Party that the applicant is acting in bad faith by filing the application in this court and she urges the court to find that the application is devoid of merit and therefore dismiss the same with costs.
9. On their party, the 2<sup>nd</sup> Interested Party through its director Harishchandra Gupta swore and replying affidavit dated 3/07/2023 and averred that the application dated 30/06/2023 is a mischievous one where the applicant was trying to obtain stay orders without invoking the jurisdiction of the court.
10. Further that the extension of order issued on 10/07/2023 cannot be extended ad finitum. That the application is compounding acts of contempt and it should therefore be dismissed
11. I will deal with each application starting with the oral application and then the notice of motion application dated 30/06/2023.

### **Analysis and Determination**

12. The first oral application arises out of a ruling this court delivered on This 30/05/2023. The ruling was in favour of the Applicant against 1<sup>st</sup> and 2<sup>nd</sup> respondents in the amount of Kshs. 462,530 being the total sum in lieu of the sold goods. The 2<sup>nd</sup> Interested Party / Applicant contends that there exists an



error on the face of the record and that the amount accorded to him ought to have been Kshs. 1,095, 730/-. Accordingly, the Applicant prays that the Ruling be reviewed.

13. I have carefully considered the oral application and perused the Supplementary Affidavit and noted that I did not consider all the attachment marked “HG1” from pages 4 to 11. I erroneously left out page 11 of the attachment.
14. The advocate for respondent did not oppose the application. The advocate for the 1<sup>st</sup> Interested party did not oppose the application.
15. The powers granted to a Court to review its Ruling / Judgement are set out in section 80 of the [Civil Procedure Act](#) Cap 21, Laws of Kenya which provides 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.”

10. Order 45 Rule 1 of the [Civil Procedure Rules](#) provides as follows:-

“(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.” [own emphasis]

16. In the case of [National Bank Of Kenya Limited v Ndungu Njau](#) [197] eKLR the court held as follows: -

“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 for review that another Judge could have taken a different view of the matter. Nor can it be a ground for 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.” [own emphasis]

17. In the ruling dated 30/05/2023, this Court stated as follows at paragraph 53 (II):

“ That Barbara Wambui Koinange and Harrison Kihara t/a Hariki Auctioneers; condemned to purge the contempt by paying the Claimant the sum of Kesh 462,530.00 in lieu of the sold goods”.
18. It is clear from the above that the final award of Kshs. 462,530.00 was a mathematical error. The invoices presented contained the following figures Ksh 159,940, Kesh 27,300, Kesh 36,690, Kesh69,600, Kesh 166,200 and finally Kesh 633,000. It is evident from the body of the Ruling that this is the amount that the Court intended to award the Plaintiff. The reference to Kshs. 462,530.00/- clearly amounts to an error on the face of the record.
19. The Court delivered its Ruling on 30/05/2023 and the oral application for review was made on the same day 30/05/2023. As such I find that the application was filed in a timeous manner.
20. The fact that the respondent has intimated at filing an Appeal against the decision is not in my view a bar to the Court reviewing its own decision.
21. I find that there has clearly been shown to exist an error on the face of the record. As such I allow this oral application for review. Accordingly, I direct that the Decree issued on 30/05/2023 by Honourable Lady Justice Jacqueline Mogeni be and is hereby reviewed and the amount awarded to the 2<sup>nd</sup> Interested Party/Applicant is hereby rectified to read Kshs. 1,095,730/- instead of Kshs. 462,530/-. I make no orders on costs.
22. The second application dated 30/06/2023 was made seeking for extension of time for the orders made on 30/05/2023 and or grant stay of the court order made on the even date.
23. I have considered the filed notice of motion, the applicant’s supporting affidavit in support thereof and the 1<sup>st</sup> and 2<sup>nd</sup> interested party replying affidavits. None of the parties filed any written submissions.
24. Although the parties herein have not filed any written submissions, I note that in their replying affidavit the 1<sup>st</sup> interested party has drawn this court to the issue of it being functus officio given that the court already pronounced itself on 30/05/2023 and gave a 30 day stay of execution of the Ruling dated 30/05/2023 and another extension on 10/07/2023 which of necessity expires on today. I am constrained to observe that, at the center of this application is whether or not this court has jurisdiction to address the application in view of its ruling delivered on 230/05/2023.
25. This is because, the doctrine of functus officio has been raised and I cannot overlook the same. The Applicant has informed the court that they will prefer an appeal and this is in order this is the right of every litigant. I observe that, if I were to address the application as drawn, I will be delving into matters that I have dealt with before, thereby breaching the principle of functus officio.
26. I find as I hereby do, that I have no jurisdiction to revisit this dispute at this stage. In that regard, I do not even deem it necessary to go into the merits of the application because if I were to do so I will be assuming jurisdiction that I have declared I do not have. Therefore, the Application is for dismissal.
27. Consequently, I make the following orders:
  - a. The Decree issued on 30/05/2023 by Honourable Lady Justice Jacqueline Mogeni be and is hereby reviewed and the amount awarded to the 2<sup>nd</sup> Interested Party/Applicant is hereby rectified to read Kshs. 1,095,730/- instead of Kshs. 462,530/-.



b. The Application dated 30/06/2023 is hereby dismissed with costs to the respondents.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19<sup>TH</sup> DAY OF JULY 2023.**

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**MOGENI J**

**JUDGE**

**In the virtual presence of:-**

**Mr.Kingara appearing with Mr.Mirie for the Applicants**

**Mr. Chumo holding brief for Mr Otwal for the 1<sup>st</sup> Interested Party/Respondent**

**Mr. Chumo holding brief for Mr. Odera for the 2<sup>nd</sup> Interested Party/Respondent**

**Ms. Caroline Sagina: Court Assistant**

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**MOGENI J**

**JUDGE**

