



**Gachanja Muhoro & Sons Limited t/a Easy Mart Supermarket v Kamau & 2 others
(Environment & Land Case 497 of 2016) [2025] KEELC 3419 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3419 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 497 OF 2016**

**AA OMOLLO, J
APRIL 30, 2025**

BETWEEN

**GACHANJA MUHORO & SONS LIMITED T/A EASY MART
SUPERMARKET APPLICANT**

AND

**MARTIN NG'ANG'A KAMAU 1ST DEFENDANT
JANE WANJIRU NG'ANG'A 2ND DEFENDANT
DAVID WANDERI T/A TAIFA AUCTIONEERS 3RD DEFENDANT**

RULING

1. This is a notice of application dated December 19, 2024 supported by an affidavit sworn on the same date by Geoffrey Muiruri Gachanja seeking for the following orders;
 1. That this Honourable court be pleased to vary or review the order issued on October 31, 2024 directing the plaintiff to deposit the sum of Kshs 6,037,772.40 in the account number 132XXXX21, KCB High Court Branch within 60 days and accordingly substitute it with an order that the plaintiff do provide a bank guarantee of Kshs 13,000,000 to the 1st and 2nd defendants from Equity Bank Kenya Limited, Matuu Branch as security.
 2. That the sum of Kenya Shillings Four Million Sixty-Five Thousand and Eight Hundred and Forty (Kshs 4,065,840) held in Account Number 132XXXX21, KCB High Court Branch in the names of Mungai Kalande & Co Advocates and Mwangi Kigotho & Co be released to the plaintiff.
 3. That the costs of this application be provided for.
2. The motion was based on the grounds that on 14th March 2024, the Court issued an order directing the plaintiff to deposit 50% of the decretal sum into a joint interest-earning account. That the plaintiff



- deposited Kshs 4,065,840 on 20th May 2024 and on October 31, 2024, the Court through a ruling delivered ordered the plaintiff to deposit an additional Kshs 6,037,772.40/ into the joint account within 60 days, bringing the cumulative sum to Kshs 10,103,612.40.
3. The applicant avers that due to ongoing cash flow challenges, he is unable to meet the deadline for the deposit and as an alternative, has secured a bank guarantee for the full decretal amount, including interest, totalling Kshs 13,000,000, from Equity Bank Kenya Limited. The plaintiff also seeks the release of the Kshs 4,065,840 already deposited in the joint account.
 4. The application was made because the Court's conditional stay orders, issued on March 14, 2024, were set to lapse unless the full security is deposited by December 31, 2024. The plaintiff asserts that providing the bank guarantee will not prejudice the defendants, as it covers the total decretal sum, including interest. Therefore, he prays for the variation of the orders issued on October 31, 2024, permitting the submission of a bank guarantee as an alternative form of security.
 5. In opposition to the motion, the defendants/Respondents filed an affidavit sworn by Martin Ng'ang'a Kamau on 16th January 2025 stating inter alia that the application is a misuse of the Court process, intended to frustrate the defendants from realizing the judgment.
 6. The Respondent asserts that the plaintiff/applicant deliberately failed to comply with the Court's order of March 14, 2024, which required the deposit of half the decretal sum into a joint interest-earning account within 60 days. Instead of depositing the full amount, the plaintiff made a partial deposit and resisted further compliance which resistance continued until the ruling of October 31, 2024, ordering the plaintiff to top up the remaining sum of Kshs 6,037,772.40.
 7. Further, that the plaintiff did not express financial difficulties until 10 days to the expiry of the sixty (60) days period given on October 31, 2024 in their motion which was filed without seeking the court's permission for extension of time to comply. The Respondent insists that no evidence has been provided to support claims of financial difficulty, and that the plaintiff's request is an attempt to alter the court's orders made on March 14, 2024, which have already been in place for over nine months. He added that reopening Court orders after such a long period is against the spirit of finality in litigation, and therefore urges the court to dismiss the plaintiff's application with costs, as it does not meet the criteria for a review.

Submissions

8. In support of his motion, the plaintiff filed submissions dated February 6, 2025 on the questions:
 - i. whether the court should vary, review the orders issued on October 31, 2024 and substitute them with an order for the plaintiff to provide a bank guarantee of Kshs 13, 000, 000 as security and
 - ii. whether the Court should reinstate and extend the orders of stay of execution issued on 14th March 2024.
9. In support they cited the case of *Cape Suppliers Limited v Sinohydro Corporation Limited* (Civil Case 848 of 2010) [2023] KEHC 2666(KLR) and *Benjo (K) Ltd v Rono*(Civil Miscellaneous application E010 of 2023)[2024]KEHC 1470(KLR), which emphasized that a bank guarantee is an adequate form of security, equivalent to a cash deposit, provided it is binding and from a reputable bank.
10. Additionally, the plaintiff requests the reinstatement and extension of the stay of execution order issued on 14th March 2024. He cited the case of *Nicholas Kiptoo Arap Korir Salat v The Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR. the plaintiff acknowledges the Court's



discretion to extend time under order 50 rule 6 of the Civil Procedure Rules and argues that the delay in meeting the deposit requirement was due to financial constraints.

11. The plaintiff submits that extending the stay would not prejudice the defendants, as they would still have access to the funds already deposited, while the plaintiff would be unfairly disadvantaged if not allowed to provide a bank guarantee. The plaintiff asserts that it has acted in good faith and that the extension would ensure fairness to both parties.

Analysis and Determination:

12. The application is brought among others section 80 of the Civil Procedure Act, 2010 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.”

13. In the case of Republic v Public Procurement Administrative Review Board & 2 others [2018] Eklr the court held: -

“Section 80 gives the power of review and order 45 sets out the rules. The rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review limiting it to the following grounds; (a) discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or; (b) on account of some mistake or error apparent on the face of the record, or (c) for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without unreasonable delay.”

14. In this application, though the applicant has not specified the ground of review they rely on, an inference is drawn that it is under the heading of “sufficient cause.” In Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] Eklr High Court of Kenya Nairobi Judicial Review Division Misc application No 317 of 2018 Justice John M Mativo stated that the expression “any other sufficient reason” appearing in order 45 rule 1 has to be interpreted in the light of other specified grounds.

15. In this instance, the applicant impleads that they have been unable to raise the additional amount but have secured a bank guarantee for the full amount thus seeks for the orders to be varied to wit substitute the order requiring him to deposit cash with the bank guarantee as security. That if the said order is granted, the sum of Kshs 4,065,840 already deposited be released to the plaintiff/applicant. The applicant annexed a copy of a letter from Equity Bank Kenya Limited dated December 19, 2024 stating that they are willing to give bank guarantee for the amount of Kshs 13,000,000 in favour of Martin Nganga Kamau and Jane Wanjiru Nganga (the Respondents).

16. The reason the applicants moved the court to revise the orders requiring him to top up the deposit is because they are facing financial challenges. This request cannot apply to money already deposited in the joint account as you cannot lack what is already provided for. There is no satisfactory explanation



made by applicant why the monies deposited (Kshs 4,065,840) pursuant to a court order should be released merely because they want to substitute with an alternative security.

17. This court can only exercise discretion to address the financial challenges as at the time the court was moved as he who comes to equity must be diligent and must come with clean hands. Consequently, I shall allow the application on terms that part of the money already deposited shall not be released back to the applicants. The variation of the order dated 31.10.2024 is made in place of a cash deposit of Kshs. 6,037,772.40 plus interest, the applicants shall within 21 days hereof procure at their cost and to the satisfaction of the Respondents, a bank guarantee in the sum of Kshs 8,934,160. In default, execution to issue for the outstanding amount and deposited in the joint account. Costs of this application to the Respondents in any event.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF APRIL, 2025

A. OMOLLO

JUDGE

