



**Barakat Exploration INC v Taipan Resources INC (Civil Case 738 of 2012)
[2025] KEHC 2034 (KLR) (Commercial and Tax) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2034 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 738 OF 2012
F GIKONYO, J
FEBRUARY 20, 2025**

BETWEEN

BARAKAT EXPLORATION INC PLAINTIFF

AND

TAIPAN RESOURCES INC DEFENDANT

RULING

Review on ‘erroneous decision’

1. The plaintiff/ applicant instituted this suit through a plaint dated 23rd November 2012 seeking entry of judgment against the defendant for CAD \$626,000 or an order that the defendant abides by the terms of the agreement dated 20th August 2012.
2. The suit was heard and Hon. M. Odero J. delivered judgment on 5th June 2020 dismissing the suit on the ground that the agreement dated 20th August 2012 was not enforceable as it was not executed by the defendant.
3. In the Notice of Motion dated 11th June 2020, the plaintiff is seeking orders to review, vary or set aside the Judgment dated 5th June 2020.
4. The application is supported by an affidavit sworn by the Plaintiff’s director Azim Nathoo and written submissions dated 26th November 2024.
5. The application is unopposed. Nevertheless, it shall be determined on merit.



Analysis and Determination

6. Although the Motion before the court is brought under, amongst others, S. 3A of the *Civil Procedure Act*, it is a review application under S. 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules.
7. Is review merited?
8. The grounds for review are set out in order 45 of the CPR. Review herein has been sought ‘on account of some mistake or error on the face of the record.’
9. According to the plaintiff, the error lies in the dismissal of its suit on the finding that the agreement dated 20th August 2012 was not duly executed, yet, it was duly executed.
10. The plaintiff suggested that the error may have emanated from the unclear copy of the agreement contained in the trial bundle. It urged the Court to peruse its initial and further bundles of documents dated 23rd November 2012 and 17th August 2015.
11. The plaintiff argues that the agreement dated 20th August 2012 was duly executed and a ruling on its admissibility was made by Hon. Kamau J. in a ruling delivered on 21st May 2014 upon the defendant’s application dated 9th March 2013 which had sought orders to strike out the suit for being an abuse of the court process for there was no agreement.
12. In the said ruling Kamau J. stated that: -

“...Copies of the Consultancy Agreement dated 20th August 2012 marked as Exhibit “MDB 1” and “MDD4” were also annexed to the Defendants Supporting Affidavit were both executed by the Plaintiff and the Defendant

...the contract of 20th August 2012 remains the only valid and binding contract between the parties herein.”
13. But, the suit was heard and Hon. M. Odero J. delivered judgment on 5th June 2020 dismissing the suit on the ground that the agreement dated 20th August 2012 was not enforceable as it was not executed by the defendant.
14. A distinction is made between an error on the face of the record and a claim of erroneous decision. If there are two possible opinions, the ‘wrong view is certainly no ground for a review although it may be for an appeal.’ *Nyamogo & Nyamogo Advocates v Kogo* [2001] EA 173
15. It is important to note that, the plaintiff’s application is based on a decision in an interlocutory application to claim that the agreement dated 20th August 2012 was executed. Yet, upon hearing the case, Odero J found the agreement was unenforceable as it had not been executed by the defendant, and dismissed the suit.
16. This is not an error on the face of the record. This ground is not a ground for review of judgment but it may be good for appeal.
17. In any case, the two opinions on whether the agreement dated 20th August 2012 was executed should be reconciled on appeal rather than review.
18. Accordingly, the review sought is not meritorious.
19. In conclusion, the plaintiff’s application dated 11th June 2020 is dismissed with no order as to costs.



Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT ONLINE APPLICATION THIS 20TH DAY OF FEBRUARY, 2025

.....

F. GIKONYO M

JUDGE

In the presence of: -

1. Ishilulu for Plaintiff
2. CA- Kinyua

