



Gamma Zenith (K) Limited v Trinity Biotech Manufacturing Limited & 3 others (Commercial Case E442 of 2023) [2025] KEHC 2720 (KLR) (Commercial and Tax) (11 March 2025) (Ruling)

Neutral citation: [2025] KEHC 2720 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E442 OF 2023
A MABEYA, J
MARCH 11, 2025**

BETWEEN

GAMMA ZENITH (K) LIMITED PLAINTIFF

AND

TRINITY BIOTECH MANUFACTURING LIMITED 1ST DEFENDANT

MINISTRY OF HEALTH 2ND DEFENDANT

RADIANCE PHARMACEUTICAL LIMITED 3RD DEFENDANT

THE HONARABLE ATTORNEY GENERAL 4TH DEFENDANT

RULING

1. The applicant filed an application dated 16/10/2024 seeking the review of the order of this Court made on 3/10/2024 that directed it to deposit the full taxed costs of Kshs. 13,415,069.18 in a joint interest earning account held by Counsels of both parties within 14 days as a condition for the grant of stay of execution of the ruling of Hon. Noelle Kyanya (DR) delivered on the 16/7/2024 in the taxation of the respondent's Party & Party Bill of Costs.
2. In the alternative, the applicant sought an order reducing the amount to be deposited in the joint interest earning account and extending the period for depositing the same sum by 6 months.
3. The application was based on the grounds set out in the body of the Motion. These were that being aggrieved by the decision of the taxing officer to award the respondent costs of Kshs. 13,415,069.18, the applicant had filed a meritorious and arguable reference against the ruling via a Chamber Summons dated 27/8/2024. And, that t applicant was currently undergoing dire financial constraints and as such could not comply with the said orders and would require 6 months to source the funds required. The



application was further grounded on the supporting affidavit sworn by one Aloisius Iriga Nderi, the applicant's Executive Director, on the 16/10/2024.

4. The respondent opposed the application vide a replying affidavit sworn on the 28/10/2024 by Carolyne Kamende Daudi. She denied the applicant's averment that it had filed a reference against the decision of the taxing master within 14 days as provided under Rule 11 of the Advocates (Remuneration) Order.
5. She deposed that the taxing master applied the correct law in arriving at her conclusion and that she judiciously acted after perusing and considering the parties' pleadings and documents. She opposed the request for a 6-month extension to the applicant to allow re-organization of the applicant's business on the grounds that there were previous failure by the applicant to meet payment obligations thus demonstrating a pattern of behaviour indicating high chances of not adhering to future commitments to pay.
6. That the applicant had failed to provide any security showing that payment would be made following any granted extension. As such there was a risk that the respondent would remain without recourse should the applicant fail to pay and thus the interim stay of execution orders ought to be dismissed as they have lapsed.
7. Order 45, Rule 1(b) is clear that for the court to review its decision, certain requirements should be met. This section 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.”

8. The aforesaid rule is based on section 80 of the *Civil Procedure Act*, Cap. 21 Laws of Kenya. Under the said section 80 of the *Civil Procedure Act*, the Court has unfettered discretion to make such order as it thinks fit on sufficient reason being given for review of its decision. However, this discretion should be exercised judiciously and not capriciously.



9. I agree with Ms. Kamende, learned counsel for the respondent that the instant application is overtaken by events. In Civil Appeal No. 2111 of 1996, *National Bank of Kenya Vs Ndungu Njau*, the Court of Appeal held 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-evidence and should not require an elaborate argument to be established. It will not be 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 proceed on an incorrect expansion of the law”.

10. The present application seems to have been brought under the ground of other sufficient ground. The applicant did not argue that there was any error apparent on the record or that there was any new evidence that was not available at the time of making the impugned order. It also did not demonstrate that there any sufficient reason to warrant interference with the said order. Financial inability, in my view, cannot be sufficient reason.
11. In the premises, I find that the application dated 16/10/2024 lacks merit and is therefore dismissed with costs.

It is so ordered.

SIGNED AT KISUMU THIS 27TH DAY OF FEBRUARY, 2025.

A. MABEYA, FCI Arb

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 11TH DAY OF MARCH, 2025.

F. GIKONYO

JUDGE

