



REPUBLIC OF KENYA



**KENYA LAW**

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**Midland Tyre and Retread Ltd & another v Prime Bank (Civil Appeal  
E1134 of 2024) [2025] KEHC 4753 (KLR) (Civ) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4753 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E1134 OF 2024**

**TW CHERERE, J**

**MARCH 20, 2025**

**BETWEEN**

**MIDLAND TYRE AND RETREAD LTD ..... 1<sup>ST</sup> APPELLANT**

**SHWETA JAYESH KOTECHEA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**PRIME BANK ..... RESPONDENT**

**RULING**

**1. Introduction**

1. This ruling is in respect of the Applicants' notice of motion dated 24<sup>th</sup> February 2025, brought under Order 45 Rule 3 of the Civil Procedure Rules and Sections 1A, 1B, and 3A of the *Civil Procedure Act*, seeking a review of the court's orders issued on 20<sup>th</sup> February 2025.
2. The Applicants seek to vary the condition requiring the deposit of  $\frac{1}{2}$  of the decretal sum as a condition for stay of execution pending appeal. They contend that the court erred by failing to consider that the Respondent is already in possession of KES 9,416,828 belonging to them, plus accrued interest at 9.5% p.a., which they argue is adequate security.
3. The Respondent has opposed the application through a replying affidavit sworn on 11<sup>th</sup> March 2025 by George W. Mathui, arguing that the grounds advanced do not meet the threshold for review and further that the court is functus officio and cannot revisit its decision.

**Issues for Determination**

4. From the affidavit evidence on record, the following issues arise for determination:
  1. Whether the court is functus officio and precluded from revisiting its decision.



2. Whether the application meets the threshold for review under Order 45 of the Civil Procedure Rules.

### **Analysis and Determination**

#### Whether the Court is Functus Officio

5. The doctrine of functus officio dictates that once a court has rendered its final decision, it lacks jurisdiction to revisit the same matter except under specific circumstances such as review or correction of clerical errors.
6. In *Telkom Kenya Limited v Ochanda (Suing on his own Behalf and on Behalf of 996 Former Employees of Telkom Kenya Limited)* [2015] KESC 18 (KLR), the Court of Appeal reinforced the principle of functus officio, holding that once a court has fully and finally determined a matter, it lacks jurisdiction to reopen or reconsider the case, except in specific circumstances such as a successful review application.
7. This principle ensures finality in judicial decisions and prevents courts from revisiting issues they have conclusively decided, unless permitted under the law, such as through a review or appeal mechanism. It upholds judicial efficiency and certainty in legal proceedings.
8. Since the Applicants have invoked Order 45, which permits review under specific circumstances such as the discovery of new and important evidence, an error apparent on the face of the record, or any other sufficient reason, the court is not necessarily functus officio.

#### **Whether the application meets the threshold for review**

9. The jurisdiction of the court to review its own orders is governed by Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the *Civil Procedure Rules*. The grounds for review are limited to:
  - a. Discovery of new and important evidence that was not available at the time of the ruling despite due diligence;
  - b. A mistake or error apparent on the face of the record; or
  - c. Any other sufficient reason.
10. In *National Bank Of Kenya Limited v Ndungu Njau* [1997] KECA 71 (KLR), the Court of Appeal held that a review cannot be granted on grounds that amount to a re-argument of the case or dissatisfaction with the court's decision. The error must be self-evident and not one that requires an elaborate process of reasoning.
11. In *Stephen Gathua Kimani v Nancy Wanjira Waruingi t/a Providence Auctioneers* [2019] KECA 594 (KLR), the Court of Appeal reiterated that an application for review cannot be used to correct a judge's reasoning or exercise of discretion, unless it involves an error apparent on the record or new evidence that could not have been produced earlier.
12. The Applicants contend that the court overlooked the fact that the Respondent is already in possession of substantial funds belonging to them, which they claim constitutes adequate security. However, this issue had been raised before the ruling delivered on 20<sup>th</sup> February 2025. As a result, the court finds that it does not qualify as "discovery of new and important evidence" within the meaning of Order 45 Rule 1 of the *Civil Procedure Rules*.
13. Furthermore, the Applicants have not demonstrated any manifest error apparent on the face of the record. Instead, they seem to be seeking a reconsideration of the court's exercise of discretion in



imposing conditions for the grant of a stay. However, such a request does not constitute a valid ground for review under Order 45 of the Civil Procedure Rules.

14. Additionally, in the ruling delivered on 20<sup>th</sup> February 2025, the court found that the parties had presented conflicting accounts regarding whether the Respondent was holding the Applicants' security. The court also held that this was an issue to be determined on appeal. Therefore, the Applicants' attempt to reargue the same issue under the guise of a review application is unacceptable.
15. The catch-all ground of "any other sufficient reason" gives courts a measure of flexibility to address exceptional situations that don't fit neatly in the first two categories but warrant relief to avoid injustice.
16. . In *Benjoh Amalgamated Ltd & Another v. Kenya Commercial Bank Ltd* [2014] eKLR, the Court of Appeal emphasized that sufficient reason must be compelling enough to justify interference with a prior decision.
17. *Shanzu Investments Ltd v. Commissioner of Lands* [1993] eKLR established that sufficient reason must be necessary for justice, and mere dissatisfaction with a condition imposed by the court does not qualify.
18. In this case, the Applicants' in an attempt to avoid compliance with a stay condition they find unfavorable argue as pointed hereinabove that the Respondent is holding funds that could serve as security.
19. In light of the aforementioned precedents and legal principles, it is evident that the Applicants have not established sufficient cause under Order 45 Rule 1. The issue concerning the security allegedly held by the Respondent is not new and has already been determined as a matter to be resolved on appeal.
20. In the end, I find that the Applicants have failed to satisfy the stringent requirements set by precedent and Order 45 Rule 1 of the Civil Procedure Rules. Consequently, the application for review dated 24<sup>th</sup> February 2025 is dismissed, with costs awarded to the Respondent

**DELIVERED AT NAIROBI THIS 20th DAY OF March 2025**

**WAMAE.T. W. CHERERE**

**JUDGE**

Appearances

Court Assistant - Ubah

For Appellants - Ms. Makori for Mogeni & Co. Advocates

For Respondent - Mr. Mutua for G. Mutua Molo & Co. Advocates

