



**Njue v Geochem Middle East Limited & another; Kenya Bureau
of Standards (Interested Party) (Commercial Case E590 of 2021)
[2025] KEHC 4612 (KLR) (Commercial and Tax) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4612 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E590 OF 2021**

MN MWANGI, J

APRIL 4, 2025

BETWEEN

PRISCILLA NYAMBURA NJUE PLAINTIFF

AND

GEOCHEM MIDDLE EAST LIMITED 1ST DEFENDANT

RAJIV BHAL 2ND DEFENDANT

AND

KENYA BUREAU OF STANDARDS INTERESTED PARTY

RULING

1. The interested party/applicant filed a Notice of Motion application dated 26th September 2023 and amended on 18th January 2024, pursuant to the provisions of Sections 1A, 1B, 3A, 63(e) & 80 of the *Civil Procedure Act*, Order 45 Rules 1 & 2, Order 50 Rule 1 of the Civil Procedure Rules, 2010 and all other enabling provisions of the law. The interested party prays for an order that this Court reviews, varies, and/or sets aside its Ruling dated 7th July 2023 and the consequential orders thereto.
2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Ms Luise Rasanga, the interested party's Manager, Legal Services. She averred that the 1st defendant was contracted by the interested party on 5th June 2009, for petroleum inspection services, but the contract was suspended later that year. She contended that an Arbitral Tribunal in a Ruling delivered on 29th July 2016, found that the interested party had breached the aforesaid contract and ordered it to compensate the 1st defendant with USD 15,401,504.70, less Kshs.87,988,213.15 being the counterclaim amount that was awarded to the interested party. She stated that subsequently,



- the 1st defendant sought for an order for enforcement of the said Award, which Order was granted in May 2017.
3. Ms Rasanga asserted that a Garnishee Order was later issued in April 2021, directing several financial institutions to release funds from the interested party's accounts to the 1st defendant. She deposed that the interested party has since paid the 1st defendant USD 18,220,414.39, which means that the defendants have fully recovered the sums owed to them by the interested party as a result of the Arbitral Award. It was stated by the interested party that in July 2023, this Court ordered the interested party to deposit USD 1,925,188.09 into a joint interest earning account pending the determination of the suit. Ms Rasanga averred that the said Order overlooked prior payments, was issued without proper Notice, and contains discrepancies. The interested party seeks a review and setting aside of the said Ruling, citing errors and changed circumstances.
 4. In opposition to the application, the plaintiff filed a replying affidavit sworn on 27th November 2023 by Ms Priscilla Nyambura Njue, the plaintiff herein. She contended that a Court cannot review its Ruling to change its Orders or findings on alleged error of law as instead, an aggrieved party ought to file an Appeal. She averred that the interested party has neither specified the alleged errors in the Court's Ruling delivered on 7th July 2023 nor complied with the consequential orders thereto. Ms Njue asserted that she is entitled to a 12.5% commission of the Arbitral Award which is not disputed by the defendants, thus justifying this Court's Ruling. She averred that the interested party had not provided sufficient evidence of full payment to the 1st defendant, hence this Court's Order of 7th July 2023 should be upheld to protect the integrity of this case.
 5. The defendants in support of the instant application filed a replying affidavit sworn on 26th November 2023 by Mr. Pradeep Gopal, the 1st defendant's Executive Director. He averred that the plaintiff has filed multiple suits against the 1st defendant, seeking a 12.5% commission from an Arbitral Award. He stated that the 1st suit filed by the plaintiff against the 1st defendant was HCCC No. 415 of 2016, but the said suit was never determined on merits as the plaintiff on 9th December 2019 successfully withdrew it, with no orders as to costs.
 6. Mr. Gopal contended that the suit that forms the subject of the present application was the second suit filed by the plaintiff against the 1st defendant, in which the plaintiff filed an application dated 24th May 2021 seeking orders inter alia, for this Court to direct the interested party to deposit USD 1,925,188.09 in a joint interest earning account pending the determination of the suit. Mr. Gopal stated that in a Ruling delivered on 7th July 2023, this Court allowed the plaintiff's application and issued the Orders sought. He asserted that the plaintiff extracted an Order on 3rd August 2023 that was inconsistent with the Ruling of 7th July 2023, thus being irregular.
 7. The application herein was canvassed by way of written submissions that were highlighted on 5th November 2024. The interested party's submissions were filed on 11th January 2024 by the law firm of Rachier & Amollo LLP. The plaintiff's submissions were filed on 17th January 2024 by the law firm of Muma & Kanjama Advocates, and the defendants' submissions were filed by the law firm of Ngatia & Associates Advocates on 28th November 2023.
 8. Mr. Onyoro, learned Counsel for the interested party cited the provisions of Section 80 of the [Civil Procedure Act](#) and Order 45 Rule 1 of the Civil Procedure Rules, 2010 and asserted that this Court has the requisite jurisdiction to grant the orders being sought. He submitted that this Court ought to have taken judicial notice of the fact that the interested party had already paid the 1st defendant the sums owed to it before issuing its Ruling on 7th July 2023. He claimed that this oversight constituted a fundamental error on the face of the record. Further, that neither the interested party nor its Advocates



- were notified of the delivery of the said Ruling. Additionally, he asserted that the Order extracted on 3rd August 2023 contained extraneous Orders that were not awarded and was therefore unenforceable.
9. The interested party seeks a review to correct the said errors, which would render the Ruling delivered on 7th July 2023 and its consequential Orders invalid. Counsel relied on the case of *Republic v Public Procurement Administrative Review Board & 2 others* [2018] eKLR, and the Court of Appeal case of *Official Receiver & Provisional Liquidator & another v Firestone EA (1969) Ltd.* Civil Appeal No. 172 of 1998, and submitted that the interested party seeks to review the Ruling delivered on 7th July 2021 and consequential Orders on grounds inter alia, of “any other sufficient reasons”. Mr. Onyoro argued that in this case, the “sufficient cause” is that the interested party has already remitted an aggregate of USD. 18,220,414.39 to the defendants, thus the sums in question have already been recovered from the interested party.
 10. Mr. Kanjama (SC), learned Counsel for the plaintiff relied on the case of *Otieno, Ragot & Company Advocates v National Bank of Kenya Limited* [2020] eKLR, and submitted that the interested party has failed to demonstrate discovery of new evidence, a clear mistake on the record, or any other valid reason for review. He stated that the interested party’s dissatisfaction stems from the Court’s final Order requiring them to deposit the specified amount in a joint interest-earning account under the Advocates’ names, which issue can be addressed vide an Appeal as opposed to an application for review. He referred to the Supreme Court case of *Robert Torn Martins Kibisu v Republic* [2013] eKLR, and argued that the interested party has failed to specify the error on the face of the record in the Ruling of 7th July 2023, and that they have not identified any new and important matter warranting a review. He stated that there is no sufficient basis for granting the orders being sought herein.
 11. Counsel for the plaintiff cited the Court of Appeal case of *Assets Recovery Agency v Charity Wangui Gethi & 3 others* [2020] eKLR, and submitted that in an application for review, the ground of “other sufficient reason” has to be consistent with the other two grounds set out in Order 45 Rule 1 of the Civil Procedure Rules, 2010, and as such, any other attempt not based on any ground set out in the Rules would constitute an abuse of the Court’s review powers. Mr. Kanjama (SC) contended that the interested party’s failure to establish an error on the face of the record and to set out any new and important matter means that there cannot be any sufficient basis for review.
 12. Mr. Ngatia (SC), learned Counsel for the defendants cited the Court of Appeal case of *National Bank of Kenya Limited v Ndungu Njau* [1997] eKLR, and the case of *Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya* [2019] eKLR, and submitted that the plaintiff’s application dated 24th May 2021 sought nine Orders, but the Court’s Ruling delivered on 7th July 2023 granted only two. He pointed out that the plaintiff extracted an Order on 3rd August 2023, including eight Orders, some of which were not granted. Senior Counsel urged this Court to set aside the entire improperly extracted Order. Further, he urged this Court to set aside the two Orders granted on grounds that the 1st defendant already received the decretal sum from the interested party, the Orders were erroneously issued based on the assumption that funds were still held by the interested party, which is incorrect. He contended that the plaintiff neither provided advisory services to the 1st defendant, nor was there any evidence of such advice presented. Mr. Ngatia (SC) argued that the instant application should be allowed due to a clear mistake on the record.

Analysis And Determination.

13. I have considered the instant application, the grounds on the face of it and the affidavit filed in support thereof. I have also considered the replying affidavits filed by the plaintiff and the defendants, as well as the written submissions by Counsel for the parties. The issue that arises for determination is whether



the interested party has made out a case to warrant being granted an order for review and/or setting aside of the Ruling dated 7th July 2023.

14. Review applications are provided for under the provisions of Section 80 of the *Civil Procedure Act*, which states 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.

15. The said Section is elaborated under Order 45 Rule 1 of the Civil Procedure Rules, 2010 as hereunder -
Application for Review of decree or order.

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. (Emphasis added).

16. In *Alpha Fine Foods Limited v Horeca Kenya Limited & 4 others* [2021] eKLR, the Court when dismissing an application similar to the instant one stated thus-

...section 80 prescribes the power of review while Order 45 stipulates the rules. However, the rules limit the grounds for evaluating requests for review. Simply put, there are definite limits to the exercise of power of review. The rules prescribe the jurisdiction and scope of review. They limit review 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 un reasonable delay.

17. The interested party seeks an order for review of this Court's Ruling delivered on 7th July 2023, on the ground that there is an error apparent on the record and other "sufficient reasons". The interested



party claims that this Court should have acknowledged that all sums due to the 1st defendant from the interested party under the decree issued by the Court in HCCOMM MISC. NO. 455 of 2016 had already been paid before the said Ruling was delivered, making the said Ruling and the consequential orders thereto unenforceable. The plaintiff, however, argues that the interested party should have appealed from the said Ruling as none of the grounds advanced by the interested party warrant an order for review.

18. On perusal of the interested party's affidavit in support of the instant application, I note that it produced a certified payment schedule showing payments made to the 1st defendant by the interested party from 29th April 2021, with the final instalment having been paid on 6th July 2022. However, despite opposing the plaintiff's application dated 24th May 2021 which led to the Ruling of 7th July 2023 neither the interested party nor the defendants informed this Court that full payment had already been made. This information was not included in their replying affidavits, even though the payments had commenced before the said affidavits were filed.
19. The Court record shows that the plaintiff's application dated 24th May 2021 was reserved for Ruling on 3rd May 2023, approximately 10 months after the last instalment was paid, but still neither the interested party nor the 1st defendant informed this Court of the said payments before the Court retired to write a Ruling on the plaintiff's application. It is not in contest that the fact that full payment had been made before delivery of the Ruling of 7th July 2023 is not a new and important matter or recently discovered evidence. To the contrary, this information was within the interested party's and the 1st defendant's knowledge but was not disclosed to this Court.
20. The Supreme Court of India in the case of *Ajit Kumar Rath v State of Orisa & Others*, 9 Supreme Court Cases 596 at page 608 cited by the Court in *Monalisa Hotel Limited v Matseki & another (Suing as the Administrators and Legal Representatives of Francis Spinks Komora - Deceased)* [2023] KEHC 23714 (KLR), discussed the scope of review and stated as follows –

A review cannot be claimed or asked merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for stabling it. It may be pointed out that the expression “any other sufficient reason” means a reason sufficiently analogous to those specified in the rule.
21. In the circumstances of this case, the interested party's contention that this Court ought to have taken judicial notice of the fact that the interested party had already paid the 1st defendant all sums due to it by the time the Ruling of 7th July 2023 was delivered has no probative value. This is because, it is now well settled that it is not the business of the Court to go looking for pleadings, evidence and/or any other documentation in support or opposition of a party's case. In this case, the interested party had a duty to avail to this Court all the necessary pleadings and/or documents in opposition to the plaintiff's application dated 24th May 2021, so as to assist this Court in arriving at a just decision. It however withheld material information.
22. In the end, the interested party has not made out a case to warrant this Court to review, vary, and/or set aside its Ruling delivered on 7th July 2023. In my considered view, the proper forum for the interested party's grievances would be at the Court of Appeal.
23. Accordingly, I find the interested party's amended Notice of Motion dated 18th January 2024 to be without merits. It is hereby dismissed with costs to the plaintiff.



It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 4TH DAY OF APRIL 2025. RULING
DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence:

No appearance for the plaintiff

Mr. Ngatia (SC) for the defendants

No appearance for the interested party

Ms B. Wokabi – Court Assistant.

