



**Muiruri v Murguyi (Miscellaneous Civil Application
E209 of 2024) [2025] KEHC 6121 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6121 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CIVIL APPLICATION E209 OF 2024**

HI ONG'UDI, J

MAY 15, 2025

BETWEEN

ALEX NJUGUNA MUIRURI RESPONDENT

AND

WILSON NATEYA MURGUYI APPELLANT

RULING

1. In the Notice of motion dated 17th February 2025 the applicant prays for the following orders;
 - i. Spent.
 - ii. That this honourable court be pleased to review and set aside its ruling dated 31st October 2024 and allow the respondent/applicant to proceed with execution of the lower court decree in Nakuru CMCC No. 1275 of 2019 Alex Njenga Muiruri v Wilson Nateya Murguyi.
 - iii. That the costs hereof be borne by the respondent.
2. The application is premised on the grounds on its face as well as the affidavit of the applicant sworn on even date. He deponed that in a ruling dated 31st October, 2024 this court allowed stay of execution of the lower court decree in Nakuru CMCC No. 1275 of 2019 on condition that the respondent deposit in court Kshs. 500,000/=. That to date no such deposit has been made by the respondent or the memorandum of appeal filed or served. Further, that the said orders cannot stand in view of the fact that they were obtained by the respondent when he misled the court that he had served the application dated 30th July, 2024 whereas he had not served the same.
3. He further deponed that the respondent did not only want to mislead the court but believed that court orders are issued in vain and could be ignored. That to the extent that the orders of 8th September 2020 and 31st October 2024 have not been complied with, the later orders should be set aside and execution allowed to proceed. Additionally, that the applicant was previously represented by the firm of M/s.



A.N. Geke & Co. Advocates who remain on record and before then he was represented by the firm of M/s. Wonchuru & Associates Advocates.

4. The respondent in response filed a replying affidavit sworn on 3rd March 2025. He averred the applicant's application was a misrepresentation of facts, misconceived, incompetent, lacked merit and was an abuse of the court process and the same ought to be dismissed with costs. That in compliance with order with the orders issued by this court on 31st October 2024, his advocates on 7th November 2024 filed and served upon the respondent's advocates a notice of appointment and memorandum of appeal both dated 6th November 2024.
5. He further averred that regarding the depositing of Ksh 500,000/= in court, he was yet to comply for reasons that he was facing severe and unforeseen financial crisis. That setting aside the ruling of this court would inflict substantial and irreparable prejudice upon him. Furthermore, that should the ruling be vacated, the respondent would be at liberty to proceed with execution of the decree, thereby potentially rendering his ongoing appeal nugatory. He added that it is in the interest of justice that the applicant's application be struck out or dismissed in its entirety.
6. The applicant filed a supplementary affidavit dated 2nd April 2025. He stated that respondent's replying affidavit confirmed that he did not serve the application dated 30th July, 2024, the ruling dated 31st October, 2024 and the memorandum of appeal. Further, that the respondent confirmed that he had not deposited the Kshs. 500,000/=. He added that due to non-compliance with the court ruling dated 31st October, 2024, it was just that his application be allowed.
7. The respondent equally filed a supplementary affidavit dated 4th April 2025. He adopted and reiterated the contents of his replying affidavit with all the annexures. He further stated that he had served the applicant through an incorrect email address namely; nkr@mmmlaw.org instead of nkr@mmmnlaw.org. He added that the confusion surrounding the email addresses was not deliberate. Furthermore, that upon the discovery of the said discrepancy, his advocates had taken immediate steps to rectify the error by serving the relevant documents to the correct address. He added that he was committed to complying with all orders issued by this court on 31st October 2024 which were imperative to ensure fairness and prevent the irreversible prejudice that would result to immediate execution.
8. The application was to be disposed of by way of written submissions, but the respondent's counsel informed the court that he would not be filing any submissions.
9. The applicant filed submissions dated 14th April 2025. Counsel gave a brief background of the application and identified one issue for determination which is whether the applicant's application dated 17th February 2025 is merited. He submitted that the said the application did not disclose any errors apparent on the face of the record or discovery of any new evidence that was not within their own knowledge. The courts attention was drawn to Section 80 of the *Civil Procedure Act*, Order 45 rule 1 of the Civil Procedure Rules and the decision in *Muyodi v Industrial and Commercial Development Corporation & Another* [2006] I EA 243, where the Court of Appeal described an error apparent on the face of the record to be as follows; -

“...In *Nyamogo & Nyamogo -v Kogo* (2001) EA 174 where the Court held that an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is real distinction between @ mere erroneous decision and an error apparent on the face of record. Where an error on a substantial point of law stares one in the face and there could reasonably be no two opinions a clear case



of error apparent on the face of the record would be made put. An error which has to be established by long drawn process of reasoning or on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error or wrong view is certainly no ground for a review although it may be for an appeal. This laid down principle of law is indeed applicable in the matter before us.”

10. Counsel further submitted that the applicant’s application dated 17th February 2025 does not show that there existed any other sufficient cause to warrant the review and setting aside of the orders issued by this court. Furthermore, that if the ruling is set aside, the applicant would be at liberty to proceed with the execution of the decree. That the same would render the respondent’s ongoing appeal nugatory. He added that the respondent had partially complied with the orders issued on 31st October 2024. He urged the court to dismiss the applicant’s application with costs and maintain the stay of execution pending the hearing and determination of the appeal.

Analysis and Determination

11. I have carefully considered the application, affidavits and the submissions by the respondent, I opine that the issue for determination by this court is whether the applicant has made out a case for review and setting aside of the ruling dated 31st October 2024.

12. The jurisdiction of this court for review of orders is provided for under Section 80 of the [Civil Procedure Act](#) gives the court unfettered discretion to review of its decision. Section 80 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. Further, Order 45 Rule 1 (1) of the Civil Procedure Rules, 2010 which 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.”



14. Notably, Section 80 of the *Civil Procedure Act* gives the power of review whereas Order 45 sets out the rules which restricts the grounds for 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.
15. The grounds relied on by the applicant in his application is that the respondent had not complied with the court orders issued on 31st October 2024. Further, that the respondent had misled the court by stating that he had served the application dated 30th July, 2024 whereas he had not served the same. Also, that the applicant had misled the court regarding his representation.
16. Evaluation of the material before me reveals that the respondent has not offered a plausible explanation for non-compliance with the orders of this court issued on 31st October, 2024. Further, his averment in the replying affidavit that he is facing severe and unforeseen financial crisis does not hold water since no evidence has been adduced in support of the same. It is now six and a half months since the decree of the lower court was stayed on a very clear condition. ie Deposit, of Ksh 500,000/= . There is no evidence of partial deposit of the money.
17. In my humble view, the respondent's act of non-compliance is unacceptable for reasons that court orders are not issued in vain. If parties are allowed to do as they please then this court's decisions would be reduced to an academic exercise. In *Central Bank of Kenya & Another vs. Ratilal Automobiles Limited & Others Civil Application No. Nai. 247 of 2006* as cited in *Republic v County Government of Kitui Ex Parte Fairplan Systems Limited [2022] eKLR*, the Court of Appeal held that Judicial power in Kenya vests in the Courts and other tribunals established under *the Constitution* and that it is a fundamental tenet of the rule of law that court orders must be obeyed and it is not open to any person or persons to choose whether or not to comply with or to ignore such orders as directed to him or them by a Court of law.
18. In view of the above I find the respondent to be non-compliant with the order (iii) of the ruling delivered by this court on 31st October, 2024. I therefore vacate the order granting him stay of execution, with immediate effect.
19. Costs to be in cause
20. Orders accordingly.

DELIVERED, DATED AND SIGNED THIS 15TH DAY OF MAY, 2025 IN OPEN COURT AT NAKURU.

H. LONG'UDI

NAKURU

