



REPUBLIC OF KENYA



KENYA LAW
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**Omondi & another v Angasa & 3 others (Civil Case
10 of 2022) [2025] KEHC 12136 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 12136 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL CASE 10 OF 2022**

F WANGARI, J

MAY 8, 2025

BETWEEN

MICHAEL OKACH OMONDI 1ST PLAINTIFF

RONALD LUKORITO WANYAMA 2ND PLAINTIFF

AND

WILLIAM ATATI ANGASA 1ST DEFENDANT

TREVOR NYAMBASO ATATI 2ND DEFENDANT

EXTROPICA TRADING COMPANY LIMITED 3RD DEFENDANT

EXTROPICA MERCHANT LIMITED 4TH DEFENDANT

RULING

1. Vide the ruling of this court dated 7/2/2024, the 1st and 2nd Defendant were found to be in contempt of the court orders dated granted on 2/3/2022 and issued on 3/3/2022. The 1st and 2nd Defendants filed a Notice of Motion dated 19/2/2024 filed by the firm of Mukuiya Ngotho and Associates Advocates, which sought to review the ruling dated 7/2/2024.
2. There was a change of Advocates and the new firm of Advocates for the Defendants filed a Notice of Motion dated 1/3/2024 which is similar to the Notice of Motion dated 19/2/2024. The new advocates did not withdraw the application dated 19/2/2024. It is deemed to be withdrawn and the Notice of Motion dated 1/3/2024 subject to this ruling be deemed as properly on record.
3. The Defendants/Applicants brought the application under Order 44 of the Civil Procedure Rules. It was stated that the Defendants had instructed the former advocates to respond to the application for contempt but failed to do so.



4. They blamed the advocate for failing to respond to the application which led to their being found in contempt of Court orders. They also stated that as at the time the court was granting temporary injunction orders against the Defendants, the subject goods had already been sold on 28/2/2022 hence the application dated 20/9/22 had been overtaken by events. The Defendants prayed that this Court do review and set aside the ruling dated 7/2/2024 citing the 1st and 2nd Defendants for contempt of court. It was directed that the application be canvassed by way of written submissions. It's important to note that the application be canvassed by way of written submissions.
5. It's important to note that the application was opposed vide the Replying Affidavit dated 27/3/2024. It was stated that the Applicants did not meet the thresholds for grant of orders for review. The application was said to be an afterthought meant to delay the punishment of the 1st and 2nd Defendants.
6. I note from the e-filing platform that even though it was said that both parties had filed their submissions, only the Plaintiffs filed their submissions dated 19/2/2025. Upon considering the pleadings and the submissions. The issue for determination is;
 - a. Whether the Applicants have met the legal threshold for an order for review.
7. The jurisdiction of this court to grant review is set out in Section 80 of the *Civil Procedure Act*. The applicant brought the application under Order 44 of the *Civil Procedure Rules*. The order deals with Pauper Appeals. The application is ripe for dismissal for being fatally defective.
8. Nevertheless, it shall be deemed to be a clerical mistake based on the contents of the application which deals with review of court order under Order 45 Rule 1. Under the rule, a party may seek for review orders if;
 - a. there is discovery of new and important evidence that despite due diligence, was not within the knowledge of the party when the orders were issued.
 - b. when there is an error apparent on the face of the record.
 - c. any other sufficient reason.
9. The Defendants stated that the Plaintiffs obtained the orders dated 3/3/2022 by misrepresenting facts and failing to disclose that the goods in issue had already been sold on 28//2/2022 prior to the court orders subject to the contempt. The Applicants further stated that Plaintiffs and the 1st and 2nd Defendants were directors of the 3rd Defendant company whose franchise agreement to distribute Shark Energy Drinks had already expired and the new franchise agreement given to the 4th Defendant where the Plaintiffs are not directors, hence there is no claim against the 4th Defendant.
10. The Applicants sought for review orders based on “sufficient reasons” as stated herein above. I have perused the Supporting Affidavit by the Applicants. It states that the goods had been sold before the application for injunction had been filed. An invoice was said to have been attached but none was attached to the application.
11. Secondly, company searches for the 3rd and 4th Defendants were said to have been attached, but none was filed. The averments in the Application and the Supporting Affidavit remains allegations as they have not been proved. Even though the said documents had been filed, the evidence being adduced ought to have been adduced when the Notice of Motion dated 1/3/2022 was filed.
12. The Applicants blame their advocates for failing to file the Replying Affidavit. The advocate chose to file written submissions only which attempted to adduce evidence that ought to have been adduced through a Replying Affidavit (See paragraph 8, 9, 10, 11 and 12 of the ruling dated 7/2/2024).



13. This application seeks to rehear the application dated 1/3/2022 which is not one of the purpose under Order 45, Rule 1. (See *Lakesteel Supplies v Dr. Bandia & Another* Kisumu HCC No. 191 of 1994). I find that the application dated 1/3/2024 fails to meet the threshold under Order 45. It therefore lacks merit and is dismissed with costs to the Plaintiffs/Respondents.

It is so ordered.

F. WANAGRI

JUDGE

8/5/2025

Court:

Ruling signed and delivered in the presence of Mbeche Advocate for 1st Defendant,

No appearance by Plaintiff and Norah Court Assistant this 8/5/2025.

Court;

The Respondent to appear for mitigation in court physically on 18/6/25. Notice to issue to Plaintiff.

