



**Disney Insurance Brokers Limited v County Government of Mombasa  
(Civil Suit 1 of 2013) [2025] KEHC 12133 (KLR) (16 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 12133 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL SUIT 1 OF 2013  
F WANGARI, J  
JUNE 16, 2025**

**BETWEEN**

**DISNEY INSURANCE BROKERS LIMITED ..... APPELLANT**

**AND**

**COUNTY GOVERNMENT OF MOMBASA ..... RESPONDENT**

**RULING**

1. This is a Ruling on an Application dated 15/10/2024. The prayers sought are as follows: -
  - a. That the Honorable Court be pleased to review and/ or set aside its Ruling dated 23<sup>rd</sup> May 2024;
  - b. That this Honourable Court do issue such other directions and/ or orders as the Court may deem just an expedient to grant; and
  - c. That the cost of this application be issued
2. The Application was supported by the Affidavit of Jimmy Waliaula, the County Attorney, Mombasa County. It was deponed that the Ruling in question setting aside the Consent dated 19/04/2022 be set aside or reviewed as only the Mombasa High Court Constitutional & Judicial Review Division could make such orders in JR Application No. 63 of 2018, being the court that adopted the said consent as the orders of the court.
3. This court was faulted for going beyond its jurisdiction in setting aside the said consent. It was prayed that the application be allowed.
4. In the Replying Affidavit dated 04/11/2024, the Respondent stated that the Judicial Review matter for purposes issuance of Mandamus Orders to compel the Applicant to satisfy the decretal sum as awarded by this court vide the Judgment dated 28/02/2018. It is in the Judicial Review matter that a



consent was entered which was to apply to various matters involving the parties including this matter. Hence this court had the jurisdiction to set aside the said consent.

5. The application was canvassed by way of written submissions. Both parties complied by filing their rival submissions in support of their positions.
6. The Applicant in its submissions dated 02/12/2024 submitted that the application ought to be allowed as it had satisfied the criteria of review under Order 45 Rule 1 of the Civil Procedure Rules. The application was based on the ground that there was an error apparent on the face of the record by this court in setting aside a consent order that was entered as orders of the court sitting in the Judicial Review division.
7. In its submissions dated 04/11/2024, the Respondent submitted that the application was an abuse of the court process by filing an unwarranted application. The Respondent relied on the case of Robert M. Muga v Muchangi Kiunga & 2 others. This court was urged to put an end to the abuse of the court process by the Applicant.

### **Analysis**

8. I have perused the application, the supporting affidavit and its annexures as well as the submissions and authorities filed by the parties.
9. The issues before this court are;
  - a. whether this court erred in setting aside a consent judgement of this court dated and adopted on 19<sup>th</sup> April 2022.
  - b. whether this application is an abuse of the court process
10. I have perused through the court proceedings including those giving rise to the Ruling subject to this application. It is a fact that judgment was entered in favour of the Plaintiff/ Respondent against the Defendant/ Applicant. The Applicant did not satisfy the judgment. This led the Respondent to file Judicial Review Proceedings to compel the Applicant to satisfy the decretal sum.
11. The parties agreed to settle the matter in an all-inclusive sum of Kshs. 59,000,000. The Applicant only paid a first instalment of Kshs. 15,000,000/= neglecting to pay the balance. This led to the filing of the application to set aside the consent judgment which application was allowed, and which ruling is subject to this application.
12. I have perused the said ruling and this court correctly found that the Respondent's application had merits and the consent judgment was set aside. It is a fact that the Judicial Review proceedings were to give effect to the judgment of this court. This court as rightly put by the Respondent had the jurisdiction to set aside the said consent judgment. I do disagree with the Applicant that the only court that could set aside the consent judgment was this court sitting in the Judicial Review division.
13. I have also perused through the proceedings after the Ruling dated 23/05/2024 was delivered. Execution proceedings against the Applicant commenced. The Notice to Show Cause proceedings took place on 29/07/2024, 07/08/2024 and 16/10/2025. The Applicant was well represented in the proceedings. The hearings for the NTSC were adjourned at the instances of the Applicant. It was until 17/10/2024 when the court was informed of this application dated 15/10/2024. The court gave directions on the same.



14. I do agree with the Plaintiff/ Respondent that this application is only meant to delay the execution proceedings and further denying the Plaintiff the fruits of the judgment. I find the application to be an abuse of the court process.
15. The upshot of the foregoing is that the court orders as hereunder;
  - a. That the Notice of Motion dated 15/10/2024 has got no merits and is hereby dismissed.
  - b. Costs to the Plaintiff/ Respondent.

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 16<sup>TH</sup> DAY OF JUNE, 2025.**

.....

**F. WANGARI**

**JUDGE**

In the presence of;

Ms. Auma Advocate h/b for Mr. Gikandi Advocate for the Plaintiff/ Respondent

Mr. Randiek for the Defendant/ Applicant

Ms. Getrude, Court Assistant

**F. WANGARI J.**

