



Skair Assocaites Architects v Registered Trustees of Evangelical Lutheran Church of Kenya (Civil Case 342 of 2014) [2025] KEHC 8806 (KLR) (Commercial and Tax) (13 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8806 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 342 OF 2014
JWW MONG'ARE, J
JUNE 13, 2025**

BETWEEN

SKAIR ASSOCAITES ARCHITECTS PLAINTIFF

AND

**REGISTERED TRUSTEES OF EVANGELICAL LUTHERAN CHURCH OF
KENYA RESPONDENT**

RULING

1. The Defendant/Applicant has by a certificate of urgency approached this court through a Notice of Motion Application filed Under Article 159(2)(a) and (d) of the Constitution of Kenya 2010, Sections 1A, 1B, 3A, 63(e), 80 and 95 of the Civil Procedure Act, Order 45 Rule 1 and Order 5 Rule 6 of the Civil Procedure Rules and it seeks thee following Orders;-
 1. Spent
 2. That this Honourable Court be pleased to review the courts ruling and order herein dated 2nd July 2024 delivered on 11th July 2024 by allowing the Defendant/Applicant to provide alternative security by depositing into court Certificate of Lease No. Nairobi/Block 187/4874, Certificate of Lease No. Nairobi/Block 187/4875 and Land Certificate No. South Maragoli / Mahanga /1285 instead of depositing the sum of Kshs.45,253,513.05 in an escrow interest earning account in the joint names of the Advocates for the Parties.
 3. That this Honourable Court be pleased to enlarge the time that was granted for the Defendant/Applicant to provide security for the order of stay herein by granting the Defendant/Applicant a further 14 days or such other period as this Honourable Court may determine as being sufficient to allow this Honourable court to determine this application and thereafter allow



the Defendant/Applicant sufficient time to deliver the alternative security into court as prayed for under prayer 2 above.

4. That the costs of this application be in the cause.
5. That this Honourable Court be pleased to make such further or other order as may be just in the circumstances.
2. The Application is supported by the grounds set out on its face and in the supporting affidavit of Andrew Ngeiywa sworn on 21st August 2024. It is opposed and the Plaintiff/Respondent has filed a replying affidavit sworn by Karima Magambo on 14th October 2024. Parties have filed written submissions on the directions of the court which I have carefully considered.
3. Ostensibly, what the Defendant seeks from the court is for the court to review its orders issued in the ruling delivered on 11th July 2024 that allowed an application for stay of execution pending the filing and determination of the Applicant's intended appeal upon provision of a security in the form of a cash deposit of the decretal amount of Kshs.45,253,513.05 in an escrow interest earning account in the joint names of the Advocates for the parties and instead allow the Defendant to substitute the said security with security in form of three land titles instead. The Defendant has proffered two certificates of Lease being L.R. Nos. Nairobi/Block 187/4874 and Nairobi/Block 187/4874 and a land title over L.R. No. South Maragoli /Mahanga.
4. The Defendant argues that the alternate securities have an open market valuation of Kshs.46,000,000 in excess of the decretal amount that they were ordered to deposit in the escrow account by the court in the ruling sought to be reviewed by the present application.
5. Order 45 Rule 1 of the Civil Procedure Rules has set the grounds upon which such review can be conducted. Order 45 provides as follows;- "1. Application for review of decree or order [Order 45, rule 1]
 - (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."
6. the above provisions have been elucidated by the courts in various court decisions. In the case of Republic v Cabinet Secretary for Interior and coordination of Government ex parte Abdulahi Said Said (2019) eKLR cited by the Plaintiff, the court stated; - "a clear reading of the above section 80 gives the power of review while order 45 sets out the rules. The rules restrict the grounds for review. They lay down 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 the decree was passed or the order made or;



- b) On account of some mistake or error apparent on the face of the record,”
7. I have carefully considered the application by the Defendants and the response filed by the Plaintiff. I note that in line with Order 45 of the *Civil Procedure Rules*, the Court has very limited and narrow scope upon which it can review its own decision. The court must be persuaded by the applicant that there is error apparent on the face of the record or there is discovery new and important material or evidence that was not available to the party at the time the ruling being sought to be reviewed was made.
8. I note that what the Applicant seeks is to have this court review its orders that directed a payment into an escrow account of the decretal amount in order for the Defendant to proceed to argue the intended appeal. The present application seeks to offer land as security in place of the escrow account. I have not seen it demonstrated to the court that these properties could not have been offered as security at the time the court made its decision. Neither has the applicant pointed out to the court if there is an error apparent on the face of the record in the said ruling. I find therefore that the Applicant has not met the threshold to warrant the grant of an order of review as sought herein. The court is therefore satisfied that the present application is without merit. The said application is dismissed with costs to the plaintiff. The interim orders granted by the court are vacated forthwith. It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 13TH DAY OF JUNE 2025

J.W.W. MONGARE

JUDGE

In the presence of:-

Mr. Eredi for the Plaintiff/Decree-Holder/Respondent.

Mr. Ochich for the Defendant/ Judgement-Debtor/Applicant.

Amos- Court Assistant

