



REPUBLIC OF KENYA



KENYA LAW
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Crown Bus Services Limited v Mukani (Suing as the Administrator of the Estate of Moses Ong'anga Wafula – Deceased) & another (Civil Appeal E240 of 2023) [2025] KEHC 11637 (KLR) (24 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11637 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL E240 OF 2023
JM NANG'EA, J
JULY 24, 2025**

BETWEEN

CROWN BUS SERVICES LIMITED APPELLANT

AND

JUDITH WERE MUKANI (SUING AS THE ADMINISTRATOR OF THE ESTATE OF MOSES ONG'ANGA WAFULA – DECEASED) 1ST RESPONDENT

CRATER VIEW AUCTIONEERS 2ND RESPONDENT

RULING

1. For determination is yet another application by Notice of Motion dated 4th March 2025 filed by the Appellant. The following reliefs are sought:
 1. Spent.
 2. Review of the Court's ruling dated 27th January 2025.
 3. Capping of outstanding decretal sum at Kshs. 4,167,000/=
 4. Spent.
 5. Spent.
 6. Deposit of Kshs. 1,000,000/= for release of motor vehicle registration numbers KBX 875R and KBR 492B.
 7. That the proposed method of settlement be adopted for liquidation of the remainder decretal sum.



2. The Applicant's Operations Manager (James Mwakio Mwachala) swore an affidavit in support of the Motion. He expresses the Applicant's inability to deposit of Kshs. 3,000/= to the Respondent as ordered by the court in its Ruling of 22nd January 2025. Citing economic challenges, the Applicant laments about its struggling business that was adversely affected by the Covid-19 Pandemic. It is instead proposed to the deposit Kshs. 1,000,000/= into court as security for costs pending determination of the Appeal.
3. The Respondent is blamed for failing to bank 18 post-dated cheques each valued at Kshs. 231,500/= issued by the Applicant after a meeting of 29th July 2022, only depositing one of the cheques. According to the Applicant, the entire indebtedness, it says ought to be capped in the sum of Kshs. 4,167,000/= , would have been fully settled had all the payment chequest been deposited in the bank.
4. The Applicant now proposes to settle the outstanding debt by monthly instalments of Kshs. 250,000/= until payment in full. Release of the attached motor vehicles is also urged.
5. The Respondent opposes the application vide affidavit evidence in reply. It is contended that the Applicant filed a similar application dated 13th February 2025 before the lower court which is pending determination. The Applicant is said to have filed similar other applications including in this court's Civil Appeals E034 of 2021 and 115 of 2015 which were determined.
6. The Respondent further avers that the Deputy Registrar of this court has settled the matter of the outstanding decretal sum herein and , in any event, this is a matter for determination in the Appeal. According to her, the parties did not reach consent on the outstanding debt contrary to the Applicant's claim.
7. The Applicant is attacked as dishonest, the Respondent pointing out that a payment cheque dated 5th August 2022 it issued was banked but was unpaid.
8. On advice of her advocates, the Respondent deposes that the Applicant has not therefore met the legal threshold for review of a court order as prayed.
9. Counsel filed written submissions which I have perused against the application and the record.
10. Order 45 of the *Civil Procedure Rules 2010* provides for review of a court's judgement, decree or order on the grounds of mistake or error apparent on the face of the record; discovery of new evidence not earlier provided despite all diligence; or for any other sufficient cause. The Court of Appeal in Civil Appeal No. 2111 of 1996 (*National Bank of Kenya Limited vs Ndung'u Njau*) observed that any error in a court's order, judgement or decree that is sought to be corrected must be self evident and not require elaborate arguments to be established. Furthermore, the superior court opined that review cannot be ordered on the ground that a different judge could have reached a different decision; or on the basis of an incorrect exposition of the law.
11. The Applicant has not shown any basis for review of the orders in question. This application is also either *res sub judice* or *res judicata* in light of determined or pending similar proceedings. The Applicant has not put in further affidavit evidence to counter the Respondent's evidence in this regard.
12. The matter of the outstanding decretal sum was settled at Ksh. 7,002,162.92 as at 20th June 2024 in the court's Ruling of 27th January 2025. Besides, the Respondent's averment that the matter has now been finally settled by the Deputy Registrar has not been challenged.
13. Clearly, the Application lacks in merit and is dismissed with costs to the Respondent.

RULING DELIVERED THIS 24TH DAY OF JULY, 2025



J. M. NANG'EA

JUDGE

In the presence of:

Mr. Nzuli Advocate for the Applicant

Mr. Mukisu Advocate for the Respondent

Court Assistant (Jeniffer)

