



**Rift Valley Railways Workers' Union (K) v N.O. Sumba & Co. Advocates; Law Society of Kenya & another (Interested Parties) (Civil Case E576 of 2021) [2025] KEHC 10984 (KLR) (Commercial and Tax) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10984 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE E576 OF 2021**

**PM MULWA, J**

**JULY 24, 2025**

**BETWEEN**

**RIFT VALLEY RAILWAYS WORKERS' UNION (K) ..... PLAINTIFF**

**AND**

**N.O. SUMBA & CO. ADVOCATES ..... DEFENDANT**

**AND**

**THE LAW SOCIETY OF KENYA ..... INTERESTED PARTY**

**NEXTGEN AUCTIONEERS ..... INTERESTED PARTY**

**RULING**

1. The Plaintiff/Applicant has approached this Court by way of a Notice of Motion dated 22<sup>nd</sup> August 2024. In the said application, the Applicant seeks orders for the review and setting aside of this Court's ruling delivered on 15<sup>th</sup> August 2024. The Applicant further prays that the suit be reinstated and heard de novo. Additionally, the Applicant seeks an order for the recusal of Hon. Justice P. Mulwa from hearing the review application.
2. The Defendant/Respondent opposed the application through Grounds of Opposition dated 4<sup>th</sup> February 2025. The Respondent contends that the application is ambiguous for failing to cite the specific provisions of law under which it is brought. It is further asserted that the Applicant has failed to advance any justifiable grounds to warrant a review of the ruling or the recusal of the presiding judge. The Respondent, therefore, urges that the application is frivolous, vexatious and an abuse of the court process.



3. Having considered the pleadings, affidavits and submissions of the parties, the issue that arises for determination is whether the Applicant has established a basis for the review of this Court's decision, and whether sufficient grounds have been laid for my recusal.
4. The law on review is anchored in Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules. Section 80 provides that:  
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.
5. In similar terms, Order 45 Rule 1(1) of the Civil Procedure Rules provides:  
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 order made 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 which he applies for the review.
6. It then follows that Courts have the discretion to allow review on three grounds as follows: the applicant must demonstrate to the court that there has been 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. Secondly, the applicant must demonstrate to the court that there has been some mistake or error apparent on the face of the record. The third ground for review is worded broadly; an application for review can be made for any other sufficient reason.
7. In the present application, the Applicant contends that the Court's ruling of 15<sup>th</sup> August 2024, was unreasonable and failed to consider the facts and evidence presented. It is argued that the Court erroneously determined the Preliminary Objection raised by the Respondent without delving into the substantive issues, and wrongly concluded that the matter was res judicata on the basis that similar issues had been determined by Hon. Justice Mbaru in a different suit. The Applicant asserts that the two suits are distinguishable, and that the present claim relates specifically to the alleged professional misconduct of an advocate in failing to remit a sum of Kshs. 3.7 million to five complainants.
8. It is trite law that where a Preliminary Objection is raised on a pure point of law, such as res judicata, the same must be considered and determined in limine, as it has the potential to summarily dispose



of the entire suit. This Court considered that threshold and found that the matter was barred by the doctrine of res judicata, which was properly raised.

9. From the arguments advanced, it is evident that the Applicant seeks, through this review application, to invite the Court to reassess the merits of its earlier ruling. This is not the purpose of a review. The Court cannot sit on appeal over its own decision in the guise of review.
10. In *National Bank of Kenya Ltd v Ndungu Njau* [1997] eKLR, the Court of Appeal held that:

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established...A review is not an appeal in disguise whereby an erroneous decision is reheard and corrected.”
11. In the present case, the Applicant has not demonstrated the discovery of new and important evidence that was not available at the time of the ruling, nor has he established any error apparent on the face of the record. What is evident is a disagreement with the outcome, which ought to be addressed by way of an appeal, not review.
12. The Applicant has also asked that I recuse myself from hearing the matter. However, the Applicant has not set out any factual or legal grounds to support such a request. There is no allegation of bias, misconduct, or conflict of interest on the part of the Court. It is not enough for a party to seek recusal merely because they are dissatisfied with a ruling. Courts have emphasized that the threshold for recusal is high and must be supported by cogent evidence. No such evidence has been presented here.
13. In the premises, I find that the application dated 22<sup>nd</sup> August 2024 is without merit. The Applicant has failed to meet the threshold for the grant of orders for review. No basis has been laid for the recusal of this Court.
14. Accordingly, the application is dismissed. Each party shall bear its own costs.  
Orders accordingly.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI.**

**THIS 24<sup>TH</sup> DAY OF JULY 2025.**

**PETER M. MULWA**

**JUDGE**

In the presence of:

Plaintiff/Applicant (in person) - present

Mr. Sumba for Defendant/Respondent

Court Assistant: Carlos

