

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC.NO. 203 OF 2019

TAHIR SHEIKH SAID INVESTMENT LIMITED.....PLAINTIFF

VERSUS

BANK OF AFRICA LIMITED.....DEFENDANT

ABDULMAJID MOHAMED ADAM..... INTERESTED PARTY

RULING

1. For determination is the notice of motion dated 18th February 2021 by the plaintiff/applicant. The plaintiff seeks orders to vary and/or review the ruling dated 26th January 2021.

2. The application is brought under Sections 1A, 1B, 3, 3A and 63(e) of the Civil Procedure Act as well as Order 45 Rule 1 and Order 50 Rule 6 of the Civil Procedure Rules. The application is supported by the affidavit of Fatma Tahir Sheikh Said. The application is opposed by replying affidavit of Mr. Charles Waiyaki. Directions were given that the application be canvassed by way of written submissions which were filed by the parties.

3. In the application, the applicant seeks inter alia, a review of the court ruling delivered on 26th January 2021. In prayer 4, the applicant seeks an alternative prayer that the conditions imposed by the court in the said ruling of depositing Kshs.398,044,619/= be varied and a bank guarantee or insurance bond for Kshs. 50 million within 90 days from the date of granting the prayer.

4. There are 12 grounds set out in support of the application. The main ground, however, being the sums to be deposited in line with the ruling of 26th January 2021 are colossal,

5. This being an application for review, the court is guided by the principles as set out in Order 45 of the Civil Procedure Rules. The said principles are that: i) there must be an error apparent on the face of the record, ii) new evidence being discovered, and iii) any other sufficient reason.

6. The applicant places reliance on the third principle of “any other sufficient reason.” The applicant argues that the order to deposit Kshs.398,044,619/= which sum the plaintiff views as colossal as the sufficient ground for review. In my view, a decretal sum and/or security to be deposited for purposes of an appeal as a condition for grant of an injunction cannot be said to be colossal, and it is in this court’s view that the ground for discovery of new evidence nor being the ground of an error apparent on the face of the record is tantamount to asking the court to sit on appeal of its own decision. In this regard, whereas the application seeks for review, it is basically an appeal, and this court cannot pretend to sit on appeal over its own decision. There being no sufficient ground to warrant the review of this court’s earlier orders, the application dated 12th February, 2021 is hereby dismissed with costs to the respondent. The injunctive orders that had been issued on 18.2.2021 at the ex-parte stage are hereby vacated.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 26TH DAY OF JULY 2021

C.K. YANO

JUDGE

IN THE PRESENCE OF:

Yumna Court Assistant

C.K. YANO

JUDGE