



REPUBLIC OF KENYA



KENYA LAW

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**Muita v Gachiri & 2 others (Miscellaneous Application Arbitration E033 of 2022)
[2025] KEHC 12515 (KLR) (Commercial and Tax) (1 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12515 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION ARBITRATION E033 OF 2022**

JWW MONG'ARE, J

SEPTEMBER 1, 2025

BETWEEN

JAMESS KARIUKI MUITA APPLICANT

AND

JAMES KINIYA GACHIRI 1ST RESPONDENT

SAMUEL MBUGUA GACHIRI 2ND RESPONDENT

PEKENYA GAS SUPPLIES LIMITED 3RD RESPONDENT

RULING

1. By a ruling delivered by this Honourable Court on 11th March 2024, the Court allowed the application filed on 11th April 2022 seeking the recognition and enforcement of the Arbitral Award issued pursuant to arbitral proceedings presided over by Jacqueline Oyuyo Githinji in accordance with section 36 of the *Arbitration Act*.
2. Subsequently and upon delivery of the said ruling, the Applicant filed a motion dated 4th April 2025 before this court seeking to lift the corporate veil of the 3rd Respondent. When parties appeared before court on 23rd April 2025, the court noting that there was no response filed in opposition thereto allowed the application as unopposed and issued directions for the oral examination of the directors of the 3rd Respondent that was to take place in open court on 25th September 2025. The said directors were to be served personally. It is these directions that preempted the filing of the present application on 24th April 2025.
3. What is before this Honourable Court is a notice of motion application filed under a certificate of urgency and is brought under Order 45 Rule 1, Order 51 Rule 1 and 3 of the Civil Procedure Rules and Sections 1A, 1B, 3A and 80 of the *Civil Procedure Act* and it seeks the following reliefs:-



1. Spent
2. That this Honourable Court be pleased to review, set aside, discharge and /or vary the ex parte orders made on 23rd April 2023.
3. That the Respondents be granted leave to file their Response to the Application dated 4th April 2025 in terms of the draft Replying Affidavit annexed hereto.
4. THAT costs of this Application be provided for.
4. The application is supported by the grounds set out on its face and the supporting affidavit of STEPHEN MWANZA GACHIE sworn on 24th April 2025. It is opposed and the Applicant has filed a Replying affidavit sworn by MARCUS NJOROGE on 7th May 2025. Both parties have filed written submissions which I have carefully considered.
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,”
- (c) for any other sufficient reason, desires to obtain a review of the decree or order,



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. The said Order 45 has however expanded the grounds for a which a review can be granted to include any other sufficient reason, desires to obtain a review of the decree or order,”
8. I have looked at the record and the arguments put forward by the Defendants that the application was allowed on a date that the matter had been set out for mention. I also note that the Defendants concede that they had not filed their response but were present when the matter was called out. There appears to be lack of clarity, from both parties’ pleadings whether indeed they had been served with the application and allowed sufficient time to file their response. I also note that the Defendants have annexed a draft replying affidavit to these pleadings through which they intend to oppose the application of 4th April 2025. For these reasons I am satisfied that there are sufficient reasons and in the interest of justice to allow the Defendants an opportunity to defend the said application of 4th April 2025. I also note that the court was moved in a timely fashion and without inordinate delay on the part of the defendants.
9. In sum I find merit in the application of 24th April 2025 and I allow the same. The draft replying affidavit shall be deemed as filed upon payment of the requisite fees. The parties are directed to file their respective written submissions to the application dated 4th April 2025 and appear in court for oral highlighting of the same on 25th September 2025 as the date had already been reserved for the oral examinations of the Directors of the 3rd Defendant.
10. On costs, in view of the fact that the Defendants are still indebted to the Plaintiff, I direct that each party bear its own costs of this application. It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 1ST DAY OF SEPTEMBER 2025.

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J.W.W. MONGARE

JUDGE.

In The Presence Of

Mr. Omondi for the Applicant.

Mr. Njoroge for the Respondents.

Amos- Court Assistant

