



**Patmose Technical Services (K) Limited v Rural Electrification Authority (Commercial Case 541 of 2012) [2025] KEHC 12623 (KLR) (Commercial and Tax) (17 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12623 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE 541 OF 2012  
A MABEYA, J  
SEPTEMBER 17, 2025**

**BETWEEN**

**PATMOSE TECHNICAL SERVICES (K) LIMITED ..... PLAINTIFF**

**AND**

**RURAL ELECTRIFICATION AUTHORITY ..... DEFENDANT**

**RULING**

1. On 18/11/2014, Ogola J entered judgment for the plaintiff in the sum of Kshs.30,477,023/- together with interest at 18% from 23/10/2011 until payment in full.
2. The defendant appealed against that judgment vide a Notice of Appeal dated 27/11/2014 and lodged an application for stay of execution pending appeal. By a ruling delivered on 4/2/2016, Ochieng J, as he then was, granted the stay on condition that the defendant deposits a sum of Kshs.50 million in a joint interest earning account. This it did and the stay ensued.
3. On 23/5/2023, this Court made a peremptory order that a sum of Kshs.45 million be released to the firm of Nyasani E. N & Company Advocates for and on behalf of the plaintiff. The said order was made on the mistaken belief that the firm hitherto appearing for the plaintiff, Stanley Henry Advocates was withholding the sum of Kshs.50 million on account of its fees.
4. In its ruling of 10/9/2024 the Court observed: -
  - “ 15. The Court was made to believe that what was in dispute was the representation for the respondent as to who between the law firms of Stanley Henry Advocates and Nyasani E. N. Advocate should be appearing for the respondent and therefore liable to receive the amount deposited in Court. The



Court did not give the applicant's advocate an opportunity to address it on the matter.

16. This is so because all that seemed to simmer, was the bills of costs belonging to the firm of Stanley Henry Advocates amounting to slightly over Kshs.4 million that were in dispute. That is why the Court ordered the balance of Kshs.45 million be released to the advocates who were coming on record for the respondent. The Court was not aware that the amount was so deposited in Court as security for stay pending appeal. That was never brought to the attention of the Court. Obviously, if it was, the Court would have sought the views of the applicant's advocates. The order was obviously made in error.”
5. With that holding, the Court reversed its earlier order made on 23/5/2023. That meant that the monies deposited in Court as security were to remain as such pending appeal. The order for release had been made in error as there was no application for such an order.
6. What followed was a substantive Motion on Notice dated 12/9/2024 by the plaintiff under inter alia, sections 1A, 1B, 3A, 63(e) and 80 of the Civil Procedure Act and Order 45 Rules 1(a) and (b) of the Civil Procedure Rules. The Motion sought the review of and the setting aside of the stay orders made on 4/2/2016 and consequently the setting aside of the order of 10/9/2024.
7. The grounds for the Motion were set out in the body thereof and the affidavit of Sameet Patel sworn on 12/9/2024. These were that; the Court had made an order for the return of Kshs.45 million from the plaintiff's advocates which had been deposited as security for the performance of the decree in this suit. That the stay order was made on 4/2/2016; that there had been inordinate delay in the filing and prosecution of the intended appeal; the plaintiff was suffering exorbitant interest on the loan taken to undertake the services offered to the defendant; that 10 years was too long a period to await the prosecution of the intended appeal. That in any event, the plaintiff was a going concern with sound financial ability to effect a refund of the decretal sum were the appeal to succeed and a refund ordered.
8. The Motion was opposed vide a Replying Affidavit of Donald B. Kipkorir sworn on 23/10/2024. He averred that the Motion was cynical and mala fide. That the defendant had filed a Notice of Appeal and requested for proceedings vide a letter dated 24/11/2014. That he had sent multiple reminders to the High Court Registry on the same.
9. That subsequently, the court file went missing and was only reconstructed on 3/7/2019. That subsequent reminders for proceedings were made but no response had been received from the Court. He was unsure if the proceedings were ready. He was to seek directions from the trial Judge on their availability. That the non-availability of the court file should not be a ground for review of the order of 10/9/2024. That the plaintiff sought to benefit from the irregular order that had been corrected by the Court vide its order of 10/9/2024. He sought that the Motion be dismissed.
10. Both parties filed their respective submissions dated 18/11/2024 and 6/12/2024 respectively. I should here apologize to the parties for the delay in delivering this ruling. Due to my transfer from the Commercial Division, Nairobi to Kisumu on 1/1/2025 vide the letter of 27/9/2024, I carried a total of 188 files for Rulings and Judgments. Unknown to me, this file was erroneously returned to the Commercial Division with others before I could write a ruling on the pending Motion. This was only brought to my attention on 31/7/2025. Apologies.
11. It was submitted for the plaintiff that the judgment resulted from a tender for supply of certain materials/goods to the defendant in 2011. That the judgment made in 2014 has remained unsettled



for 10 years. That after obtaining an injunction, the defendant became indolent and made no effort to prosecute its appeal.

12. On the Motion, it was submitted that the same was premised on sections 1A and 1B of the *Civil Procedure Act* on the overriding objective of the Act. That the review was being sought on the basis of any other sufficient reason under section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules. That the conduct of the defendant after the grant of stay does not meet the approval of the Court and was a ground to discharge the stay orders of 4/2/2016. The cases of *Mobile Kitale Service Station v Mobil Oil Kenya Ltd & Another* [2004] eKLR and *Harrishchandra Bhovanbhai Jobanputra & Another v Paramount Universal Bank Ltd & 3 Others* [2014] eKLR were relied on in support of that proposition.
13. That because of the indolence of the defendant, the stay order was meant at obstructing the course of justice and delay the enjoyment of the plaintiff's fruits of its judgment. The case of *David Wambua Ngii v Abed Silas Alembi & 6 Others* [2014] eKLR was cited in support of that submission.
14. For the defendant, emphasize was placed on the provisions of section 80 of the *Civil Procedure Act*, Order 45 of the Civil Procedure Rules, Rules 77 and 89 of the Court of Appeal Rules and the cases of *Parliamentary Services Commission v Martin Nyaga Wambora* [2018] eKLR and *Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya* [2019] eKLR. That review is restricted to the three grounds set out in Order 45 and nothing else.
15. That the plaintiff had not demonstrated any discovery of any new evidence, an error apparent on the record or any sufficient reason to warrant the review of the orders sought. The defendant set out the reasons for the long delay in the filing of the intended appeal. That it had filed the Notice of Appeal and applied for proceedings within time; that the proceedings are yet to be availed yet they are crucial for the appeal under Rule 89 of the Court of Appeal Rules. That the Court file got lost and had to be reconstructed in 2019. That there was no indolence on its part. Finally, that any sufficient reason in Order 45 Rule 1 of the Civil Procedure Rules should be interpreted in the light of the other two grounds, viz, discovery of new evidence and error apparent on the face of the record.
16. This is an application for review of the order of this Court of 4/2/2016. The power to review is given under section 80 of the *Civil Procedure Act* and the grounds set out in Order 45 of the Civil Procedure Rules. The grounds are well known; discovery of new evidence, error apparent on the face of the record and for any sufficient reason.
17. The defendant submitted that any sufficient reason is to be interpreted in the light of the other two grounds under Order 45 Rule 1. I do not agree with that proposition. The term used by the rule is 'any sufficient reason' not 'any such sufficient reason.' The words are clear in their meaning, it is any other reason that the Court may deem sufficient to review an order. In my view, any other sufficient reason need not be analogous with the other grounds set out in Rule 1 of Order 45. Such interpretation would place a restriction and clog the unfettered right provided for under section 80 of the Act.
18. In *Pancras T. Swai v Kenya Breweries Ltd* [2014] eKLR, the Court of Appeal was emphatic that: -  

“Order 44 Rule 1.. gave the trial court discretionary power to allow review on three limbs therein stated or ‘for any sufficient reason’... As repeatedly pointed out in various decisions of this Court, the words ‘for any sufficient reasons’ must be viewed in the context firstly of section 80 of the *Civil Procedure Act*, Cap 21, which confers an unfettered right to apply for review and secondly on the current jurisprudential thinking that the words need not be analogous with the other grounds specified in the order.”



19. The present Motion was made on the grounds that there were sufficient reasons to review the order of 4/2/2016. The reasons advanced were that; the plaintiff had a judgment in its favour that was meant to cover it for the losses it had incurred for the goods supplied to the defendant and was unable to enjoy its fruits as the defendant had remained indolent for 10 years without instituting any appeal for which a stay had been granted on 4/2/2016. That the loan the plaintiff had taken to service the goods delivered to the defendant was incurring interest that was threatening its survival.
20. In opposition, the defendant's position was that it had appealed within time, applied for proceedings on time but the same had not been supplied. That the Court file was lost and a new one had to be reconstructed in 2019.
21. I should from the onset observe that the cases relied on by the plaintiff are un-applicable as they were concerned with setting aside interlocutory injunctions. The issue to consider is whether there is any sufficient reason to revisit and set aside the order of stay granted on 4/2/2016.
22. When granting the order of 4/2/2016, the Court considered the competing interests of the two parties, the plaintiff's right to enjoy the fruits of its judgment and the defendant's undaunted right to appeal and have its case considered by a higher court. A condition was imposed of depositing the Kshs.50 million in a joint interest earning account.
23. No doubt, the subject judgment was made on 18/11/2024. Two years later, when the court was granting the order of stay, Ochieng J was concerned that the defendant had not shown keenness in prosecuting the appeal. He quipped: -
  - “ 13. It is true that the applicant did not have to prove that he had lodged a Memorandum of Appeal. But it could be useful, where an appeal had been filed, to have the applicant demonstrate to the court how keen he was in pursuing the appeal.”
24. It is a constitutional imperative that justice should not be delayed. Article 159(2)(b) of *the Constitution* is clear, that “justice shall not be delayed.” This coupled with the overriding objective in sections 1A and 1B of the *Civil Procedure Act* enjoin courts to facilitate the just, expeditious, proportionate and affordable resolution of disputes. The question here is, is the intended appeal being pursued within these parameters? I do not think so.
25. Firstly, the order of stay was made on 4/2/2016. Nothing is shown to have been done to date to lodge the intended appeal and prosecute it. The Court has considered and appreciated that both the Notice of Appeal and application for proceedings were made in good time.
26. However, whilst it was alleged that several reminders were made to Court before the court file got lost. No copy of letter was produced to prove that any letter was written to court between 24/11/2014, when the proceedings were originally applied for and when the court file got lost. In any event, it was not clear when the court file got lost.
27. Secondly, what is clear is that the court file was reconstructed in 2019. There was no evidence whatsoever that was produced to show of any steps taken by the defendant between that 2019 to the date the Motion was filed. A mere statement in an affidavit is not enough. It was imperative on the part of the defendant to have produced the letters, if any, written to the Deputy Registrar of the Court and the responses thereto. That would have convinced this Court that the order of stay given on 4/2/2016 was not meant to keep the plaintiff away from the fruits of its judgment.



28. In the premises, this Court makes a finding that, after the order for stay of 4/2/2016 was given, the defendant went to slumber. It never took any steps to lodge and prosecute the intended appeal. The period of between 4/2/2016 and 12/9/2024 is 8 years of painfully waiting for an appeal that might never be. That in the premises, justice has been delayed in breach of Article 159 (2) (b) of *the Constitution*. That the so called intended appeal is not in consonance with the overriding objective of the *Civil Procedure Act*.
29. In this regard, the Court holds that the matters set out above are sufficient reason to warrant a review of the order of 4/2/2016. The stay should be discharged to permit the plaintiff enjoy the fruits of its 11-year-old judgment. In any event, the plaintiff's Managing Director swore on oath and it was not denied, that the plaintiff would be able to refund the decretal sum if paid to it if and when, if all, the appeal will be lodged, prosecuted and allowed.
30. Accordingly, the application dated 12/9/2024 is found to be meritorious and it is allowed in terms of prayer No. (c). The plaintiff will have the costs of the application in any event.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 17<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

