



REPUBLIC OF KENYA



Olouch t/a Trapezoid Constructors v Equity Bank Limited (Civil Case 2 of 2021) [2024] KEHC 2538 (KLR) (5 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2538 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL CASE 2 OF 2021
JK SERGON, J
MARCH 5, 2024**

BETWEEN

JOHN O OLOUCH T/A TRAPEZOID CONSTRUCTORS PLAINTIFF

AND

EQUITY BANK LIMITED DEFENDANT

RULING

1. The application coming up for determination is a notice of motion dated 18th January, 2024 seeking the following orders;
 - (i) Spent
 - (ii) That pending inter partes hearing of this application, this Honourable Court be pleased to issue an order of stay of execution of the ruling given on 17th January, 2024 and the consequential orders of warrants of arrest.
 - (iii) That upon hearing and determination of the application, inter partes this Honourable Court be pleased to review/vary and or set aside the ruling and consequential orders given on the 17th January, 2024.
 - (iv) That upon the ruling being reviewed/varied the Honourable Court be pleased to issue a hearing date for the application dated 16th January, 2024.
 - (v) The costs of this Application be in the cause.
2. The application is supported by grounds on the face of it and the supporting affidavit of Bryson Ometto an advocate practicing in the firm of Messrs Rachier and Amollo LLP and has knowledge and direct conduct of the matter on behalf of the Plaintiff/Judgment Debtor herein.



3. He avers that the matter came up for notice to show cause why warrants of arrest should not be issued against the Judgment debtor in execution of the court's Judgment on 13th December, 2023.
4. He avers that the firm of Messrs Rachier and Amollo LLP had just been instructed post-judgment and therefore sought the court's indulgence to put in an application for leave to come on record for the Judgment debtor. He avers that the matter was subsequently given a further mention date for compliance on 17th January, 2024. The firm forwarded the application for leave to come on record dated 16th January, 2024 to court electronically by email for assessment of filing fees and eventual filing in court. They made the requisite payments and proceeded to court on 17th January 2024, assured that the application dated 16th January, 2024 was duly filed.
5. He avers that on 17th January, 2024, the matter was called out and they were surprised when the court informed them that the application was not in court hence they had not complied with the directions given on 13th December, 2023. The court went ahead and made a ruling on the pending notice to show cause and subsequently allowed the notice to show cause application and issued warrants of arrest against the judgment debtor.
6. He avers that the advocates for the judgment creditor have since taken steps to extract the warrants of arrest to execute against their client.
7. He avers that the application to review, vary and/or set aside the orders has been brought without undue delay. He reiterated that reviewing the ruling and consequential orders of 17th January, 2024 and admitting their application dated 16th January, 2024 would afford the judgment debtor a chance to legal representation.
8. The Respondents did not file a replying affidavit in response to the instant application.
9. The matter was fixed for inter partes hearing on 6th February, 2024 and the Learned Counsel for the parties made oral submissions which I have duly considered.
10. Mr. Migiro Learned Advocate for the Judgment Creditor contended that warrants of arrest had been issued hence the instant application had been overtaken by events and therefore the application dated 18th January, 2024 should be dismissed.
11. Mr. Munyua Learned Advocate for the Judgment Debtor pointed out that the instant application was served and there was no response on the part of the Respondent.
12. The Learned Advocate reiterated that the warrants of arrest were issued because they were yet to come on record which was merely inadvertence and further that if the said warrants were not stayed the Plaintiff/Judgment Debtor would lose his liberty.
13. I have considered the instant application and the oral submissions by the parties and the sole issue for this court's determination is whether to review/vary and or set aside the ruling and consequential orders given by this court on the 17th January, 2024.
14. The legal provisions governing review are section 80 of the [Civil Procedure Act](#) and Order 45 Rule 1 of the [Civil Procedure](#) and the circumstances/conditions under which orders for review may be made are as follows;
 - “(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 when 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 a person desirous 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.”

15. Section 80 of the *Civil Procedure Act* grants the court the power to make orders for review whereas Order 45 sets out the jurisdiction and scope of review by hinging review to discovery of new and important matters or evidence, mistake or error on the face of the record and any other sufficient reason.
16. In the instant matter, I am inclined to allow this application for review on the grounds of any other sufficient reason, the applicant has offered a plausible explanation for non-compliance with the directions of this court issued on 13th December, 2023. The firm was retained by the Plaintiff/Judgment Debtor post judgment and that their application dated 16th January, 2024 seeking leave to come on record for the Plaintiff/Judgment Debtor was not admitted inadvertently despite having been filed electronically. Notwithstanding the inadvertence, this court went ahead and made a ruling on the notice to show cause and subsequently issued warrants of arrest against the judgment debtor, who was at risk of being condemned unheard without the benefit of legal representation and of losing his liberty.
17. I have also taken cognizance of the fact that the application for review has been made timeously without unreasonable delay. I therefore allow it.
18. The upshot of this application is that the notice of motion dated 18th January, 2024 is allowed with the following consequential orders;
 - (i) I hereby set aside the ruling and consequential orders issued by this court on 17th January, 2024
 - (ii) I hereby allow the application dated 16th January, 2024 seeking leave to the firm of M/s Rachier & Amollo Advocates LLP to come on record for the Plaintiff/Judgment Debtor in the place of M/s Anwar & Company Advocates to be admitted to the record and subsequently fixed for inter partes hearing.
 - (iii) The costs of this application be in the cause.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 5TH DAY OF MARCH, 2024.

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Mr. Rutoh

Migiro for the Judgment/Creditor

Munyua Ezekiel for Judgment/Debtor

