



REPUBLIC OF KENYA



**KENYA LAW**  
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**Hakken Consulting Limited & 2 others v Seven Seas Technologies Limited & another; Rent Works East Africa Limited (Objector) (Civil Case 287 of 2015) [2024] KEHC 5462 (KLR) (Commercial and Tax) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5462 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE 287 OF 2015  
FG MUGAMBI, J  
MAY 17, 2024**

**BETWEEN**

**HAKKEN CONSULTING LIMITED ..... 1<sup>ST</sup> PLAINTIFF  
HAKKEN S.A ..... 2<sup>ND</sup> PLAINTIFF  
CARLOS OLIVEIRA ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**SEVEN SEAS TECHNOLOGIES LIMITED ..... 1<sup>ST</sup> DEFENDANT  
SEVEN SEAS TECHNOLOGIES NIGERIA LTD ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**RENT WORKS EAST AFRICA LIMITED ..... OBJECTOR**

**RULING**

1. This ruling determines the application dated 16<sup>th</sup> January 2023. The applicant seeks a review of this Court's ruling of 24<sup>th</sup> November 2022 (the ruling) so as to require the judgment debtor instead of the applicant who is an objector in the proceedings to deposit the decretal amount as security.
2. The application is supported by the affidavit sworn by SARAH NYAMACHE, the Finance and Administration Manager of the applicant Company on 16<sup>th</sup> January 2023. The applicant confirms that the ruling allowed the applicant's application for stay of execution pending appeal on condition that the applicant deposits half the decretal sum in 30 days failure to which the stay would lapse.
3. The applicant contends that it was not a party to the suit between the plaintiffs and defendants and the orders which it terms as unjust and prejudicial could not therefore be made against it. It maintains



that its only stake in the suit is its legal interest in the property that the decree holder seeks to attach in execution against the judgment debtor. For these reasons the applicant takes issue with the ruling and therefore asserts that there was an error on the face of the record.

4. The application is opposed through a replying affidavit sworn on 2<sup>nd</sup> February 2023 by ERIC MUTUA, Counsel on record for the decree holders/respondents. The respondents assert that there was no error in the ruling as claimed and that the prerequisites for a review of a decision have not been met. They suggest that the applicants should have appealed the decision, indicating a challenge to its merits rather than seeking a review.
5. The application was canvassed by way of written submissions filed on 23<sup>rd</sup> February 2023 and 27<sup>th</sup> February 2023 by the applicant and the respondents respectively.

### **Analysis and determination**

6. This Court has carefully considered the pleadings, submissions and evidence presented by the opposing parties. As correctly pointed out, in an application for review, this Court is guided by the provisions of Order 45 of the *Civil Procedure Rules*. The question is whether the applicant has satisfied the threshold for review of this Court's orders.
7. To succeed the applicant must prove one of the following:
  - i. 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;
  - ii. Some mistake or error apparent on the face of the record or;
  - iii. Any other sufficient reason.”
8. As stated earlier the applicant relies on the second ground and argues that an error apparent on the record occurred when the Court required the applicant to deposit security. They assert that it should have been the judgment debtor's responsibility to provide such security. The applicant now requests a review and correction of this alleged error.
9. The Court of Appeal in *National Bank of Kenya Limited V Ndungu Njau*, [1996] KLR 469 clarified that a review may be granted to correct an error or omission that is obvious and does not need extensive argument to establish. It further noted that a simple difference in legal interpretation by another judge, or an incorrect application of the law, does not constitute grounds for a review. The Court specifically stated as follows:

“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. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the Court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be ground for review.” (emphasis mine).



10. The same holding was articulated in *Nyamogo & Nyamogo Advocates V Kogo*, [2001] EA 170, where the Court again explained that an error must be obvious and indisputable, and not one that requires intricate reasoning or could be subject to differing opinions. The Court stated thus:

“Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by a long-drawn process of reasoning or on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Again, if a view as adopted by the court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was also possible. Mere error or wrong view is certainly no ground for a review although it may be for appeal.” (emphasis mine).

11. After re-evaluating the evidence and the ruling of November 24, 2022, I find that the Court was aware that the application before it stemmed from objection proceedings. It recognized that the applicant was an objector to the execution of the decree between the plaintiff and the respondents.
12. It is clear from the ruling that upon considering the evidence and arguments presented by the parties the Court concluded that imposing a conditional order would strike a fair balance between protecting the respondent’s interests and preserving the applicant’s right to appeal.
13. I am satisfied that the Court considered the roles and responsibilities of the involved parties appropriately. It is critical to note that in a review application the focus ought to be on the decision of the Court and not on the merit of the decision under review as confirmed by the Court of Appeal, in *Rafiki Microfinance Bank Limited V Youth Enterprise Development Fund Board, (Civil Appeal No. E222 of 2022)* [2024] KECA 239 (KLR).
14. Ultimately, I find that the ruling of 24<sup>th</sup> November 2022 was the result of careful consideration of the evidence, submissions, and legal interpretation by the Court. On the strength of the judicial pronouncements that I have set out, it is clear that the application before me invites debate on the substance and merit of the previous ruling which is whether an objector can be ordered to pay security for costs in an application for stay of execution.
15. The applicant’s disagreement with the Court’s decision regarding their obligation to deposit security is a matter for appeal rather than review.

### **Disposition**

16. Consequently, the application dated 16<sup>th</sup> January 2023 is devoid of merit and the same is dismissed with costs to the respondents.

**DATED, SIGNED AND DELIVERED IN NAIROBI THIS 17<sup>TH</sup> DAY OF MAY 2024.**

**F. MUGAMBI**

**JUDGE**

