



**Transnational Bank v Byegon & 2 others; Kennedy Ochieng Were t/a M/
S Sila Munyao & Co. Advocates (Garnishee); Byegon (Interested Party) (Civil
Case 6 of 2018) [2023] KEHC 866 (KLR) (10 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 866 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL CASE 6 OF 2018
AN ONGERI, J
FEBRUARY 10, 2023**

BETWEEN

TRANSNATIONAL BANK PLAINTIFF

AND

ROBERT KIPKEMOI BYEGON 1ST DEFENDANT

DIANA CHEMTAI BYEGON 2ND DEFENDANT

FAITH CHEBET 3RD DEFENDANT

AND

**KENNEDY OCHIENG WERE T/A M/S SILA MUNYAO & CO.
ADVOCATES GARNISHEE**

AND

JOAN CHEROTICH BYEGON INTERESTED PARTY

RULING

1. The application coming for consideration in this ruling is the one dated 16/8/2022 seeking the following Orders:-
 - i. That this matter be certified as urgent and service of this application be dispensed with in the 1st instance.
 - ii. That the Honourable Court be pleased to review and/or set aside its Orders given on 29th day August, 2018 and issued on 7/9/2018 and order the garnishee herein to release to the applicant's Counsel a sum of Kshs.4,160,000/= together with interest from the date of



Judgment (3/5/2018) being the damages for loss of dependency awarded in Kericho HCCC No.6 of 2013 vide its Judgment of 3rd day of May, 2018.

- iii. That this Honourable Court be pleased to make such further or other orders as it may deem fit just and expedient in the circumstances of this case.
 - iv. That the costs of this Application be provided for.
2. The application is based on the grounds on the face of it and supported by the Affidavit of Joan Cherotich Byegon in which she deposed as follows:-
- i. That judgement in Kericho HCCC No. 6 of 2013 was delivered on 31/5/2018, a suit for claim of damages following a road traffic accident that occurred on 20th December 2021 involving the Applicant's deceased mother, Linner Chepkoech Chumo.
 - ii. That the Interested Party/Applicant learnt that the court awarded a total of Kshs. 4,160,000/= as damages for loss of dependency but vide the court's order given on 29/8/2018 and issued on 7/9/2018 the amount was erroneously included in the amount held by the garnishee herein.
 - iii. That at no time was their consent or concurrence sought before the garnishee orders were issued as she as well as her brother Emmanuel Kiplangat Byegon are college and school going respectively and therefore are still dependents.
 - iv. That the said award had been erroneously held by the garnishee hence denying them what they were rightfully awarded to help in schooling and college education.
 - v. That it was in the interest of justice that the garnishee be ordered to release the award amount together with interest from the date of judgement to enable them settle their school fees and other expenses.
 - vi. That the Interested Party/Applicant is likely to suffer irreparable loss unless the court intervenes as a matter of urgency.
3. The Application is opposed by the Affidavit of Kennedy Ochieng sworn on 28/10/2022 in which he deposed as follows:-
- i. That the Interested Party's/Applicant's application was bad in law, incompetent, mischievous, frivolous, an afterthought and an abuse of court process and ought to be dismissed.
 - ii. That the said Application and/or orders sought were premised on legal proceedings before the court which the Applicant/Interested Party was not party to and never sought to be made one.
 - iii. That the Interested Party/Applicant could not legally seek the orders sought without having been made a party to the proceedings in the first place.
 - iv. That in order to obtain a review, an Applicant had to show to the satisfaction of the court that there has been a discovery of new and important evidence which was not within her knowledge and could not be produced at the time when the order to be reviewed was made and that there was a mistake or error apparent on the face of the record or for any other sufficient reason.
 - v. That the Interested Party's/Applicant's reason that the damages for loss of dependency amounting to Kshs. 4,160,000/= was erroneously included as part of the amount held by the garnishee without the consent or concurrence of the Applicant or her siblings and that it would be in the interest of justice to review the order as the applicant and her siblings are still students does not amount to sufficient grounds.



- vi. That the Interested Party/Applicant has failed to demonstrate that there was mistake or error apparent on the face of record and/or there was any sufficient reason to enable the court set aside its decision as prayed.
 - vii. That being that the Interested Party/Applicant is not a party to the proceedings the court will find that the reasons cited by the interested Party/Applicant does not suffice as sufficient ground for Review.
4. The parties filed written submissions which I have considered.
 5. The Interested Party/Applicant submitted that the Plaintiff had not met the threshold for attachment by way of garnishee proceedings under Order 23 rule 1 of the *Civil Procedure Rules* as the Plaintiff neither produced any decree nor filed their bill of costs in court as the law demands.
 6. The Interested Party/Applicant asserted that she met the grounds for review and cited section 80 of the *Civil Procedure code* and Order 45 Rule 1 of the *Civil Procedure Rules* in arguing that the absence of a decree in respect to the amount claimed by the plaintiff was a sufficient ground to review the said order of the Court.
 7. The Respondent contended that the Interested party/Applicant’s reasons did not suffice as sufficient grounds for Review. He cited the case of *Republic v Advocates Disciplinary Tribunal Exparte Apollo Mboya* [2019] eKLR Nairobi Miscellaneous Application 317 of 2018 and *National Bank Of Kenya Limited Vs Ndungu Njau* [1997] eKLR Nairobi civ app 211 of 96
 8. The Respondent reiterated that a review cannot be claimed or asked for merely for fresh hearing or arguments or correction of an erroneous view taken earlier. That the Interested Party/Applicant had failed to show that the court did not look at the evidence referred to out of inadvertence or mistake and that had it looked at it, the Court would have reached a different conclusion.
 9. The respondent submitted that what the Interested Party/Applicant was alluding to could suffice to be an error in judgement and which error could only be a ground of Appeal.
 10. The Respondent reiterated that the Applicant was a stranger to the proceedings for failure to formally request to be made a party to the proceeding and therefore the application ought to have failed.
 11. The sole issue for determination in this ruling is whether this court should review the Orders given on 29/8/2018 and 7/9/2018.
 12. The Law that governs review of the Orders of the court is as follows: - Order 45 rule 1 (1) states that: - “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.”



13. In *Francis Njoroge v Stephen Maina Kamore* (2018) eKLR, the court stated as follows: - “...Order 45 of the *Civil Procedure Rules*, 2010 is very explicit that a court can only review its orders if the following grounds exist: -
- (a) There must be discovery of a new and important matter which after the exercise of due diligence, was not within the knowledge of the applicant at the time the decree was passed or the order was made; or
 - (b) There was a mistake or error apparent on the face of the record;
 - (c) There were other sufficient reasons; and
 - (d) The application must have been made without undue delay.”
14. I find that the Interested Party/Applicant is a stranger to these proceedings for failure to formally request to be made a party to the same.
15. A brief history of this case is that the Plaintiff/Applicant herein filed ELC Suit No.12 of 2015 seeking to exercise its power of sale in respect of land parcel No. LR No.kericho/kapsoit/620 in respect of a loan advanced to Linner Chepkoech Chumo (Deceased) who was the mother of the Interested party/Applicant.
16. The case was transferred to this Court for disposal in 2018 but the same has not been heard interpartes
17. The Respondents are administrators of the Estate of the Deceased being the husband and the children of the deceased respectively.
18. The amount the Interested party/Applicant is seeking released was paid to the Estate of Linner Chepkoech Chumo (deceased) in HCCC No.6 of 2013 in respect of damages for loss of dependency upon her demise.
19. I find that the grounds for review have not been established and again the Interested Party/Applicant is a stranger to these proceedings for failure to formally request to be made a party to the same.
20. I dismiss the application dated 16/8/2022 with costs to the Respondents.
21. I direct that this case be listed for compliance with Order 11 of the CP Rules and for a hearing within 30 days of this date.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 10TH DAY OF FEBRUARY, 2023.

A. N.

JUDGE

