



Hakken Consulting Ltd & 2 others v Seven Seas Technologies Limited & another; Rentworks East Africa Limited (Objector) (Civil Case 287 of 2015) [2023] KEHC 17561 (KLR) (Commercial and Tax) (19 May 2023) (Ruling)

Neutral citation: [2023] KEHC 17561 (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 19, 2023**

BETWEEN

**HAKKEN CONSULTING LTD 1ST PLAINTIFF
HAKKEN SA 2ND PLAINTIFF
CARLOS OLIVERA 3RD PLAINTIFF**

AND

**SEVEN SEAS TECHNOLOGIES LIMITED 1ST DEFENDANT
SEVEN SEAS TECHNOLOGIES NIGERIA LIMITED 2ND DEFENDANT**

AND

RENTWORKS EAST AFRICA LIMITED OBJECTOR

RULING

Brief Facts

1. The facts leading to this application are that on November 24, 2022, the court delivered a ruling on an application for stay of execution pending appeal. The orders were conditional on the objector depositing half of the decretal sum in an interest earning account in the joint names of the advocates for both parties within a period of 30 days.
2. The objector filed this application seeking a review of those orders. The application is dated January 16, 2023 and is brought under section 80 of the *Civil Procedure Act*, Order 45 rule 1 of the *Civil Procedure Rules* and all other enabling provisions of the law.



3. The orders sought in the application are as follows;
 - i. Spent
 - ii. Spent
 - iii. That the Honourable Court do review the ruling dated November 24, 2022 and vary the same to require the judgment debtor to deposit the decretal amount or any portion thereof instead of the objector/applicant
 - iv. That time be extended to enable the judgment debtor meet prayer 3
 - v. That the costs of this application be provided for.
4. The application is premised on the grounds on the face of it and on the supporting affidavit sworn by Sarah Nyamache. The applicant's case was that the court in its ruling dated November 24, 2022 made an error in ordering the decretal sum to be deposited by the objector and that the same order should have been directed to the judgment debtor.
5. The applicant contended that the objector's interest was only with respect to the properties that the decree holder sought to attach in its execution against the judgment debtor. The applicant averred that the orders granted were prejudicial as the objector would be burdened with depositing a decretal sum for which it had no stake in.
6. The applicant's case was further buttressed in its submissions. It was the applicant's view that the Notice of Objection dated February 24, 2020 was with respect to the attached properties owned by it and since the court dismissed the application the objector preferred an appeal at the Court of Appeal. It was contended that there was sufficient reason to vary the order of the court to correct the error made therein.
7. The decree holder opposed the application vide a replying affidavit dated February 2, 2023 sworn by Eric Mutua. The respondent's position was that the court on November 24, 2022 gave a reasoned decision where it gave a rationale for stay of execution pending appeal. It was stated that a review of the objection decision would amount to sitting on appeal of the said orders.
8. In the submissions, it was stated that the grounds laid out in the application did not point out to an error apparent on the face of the record.

Analysis

9. I have considered the application, the response and the submissions by counsel. The main issue for determination is whether the applicant has made out a case for review of the ruling delivered on November 24, 2022.
10. Section 80 of the *Civil Procedure Act* and Order 45 rule 1 of the *Civil Procedure Rules* give the framework in which the courts can exercise the power to review their decisions. Section 80 of the *Civil Procedure Act* provides as follows;

"Any person who considers himself aggrieved—

- a. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or



- b. by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

11. Order 45(1) of the *Civil Procedure Rules* sets out the requirements for an application for review as follows:

“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 review of judgment to the court which passed the decree or made the order without unreasonable delay”.

12. The applicant invites the court to review its orders on the grounds that there was sufficient cause for the court made an error by ordering stay be granted on condition that the objector deposits half of the decretal sum in a joint interest earning account.

13. In *Republic vs Cabinet Secretary for Interior and Co-Ordination of National Government Ex Parte Abullabi Said Sald* [2019] eKLR, the court observed the following, with respect to this ground of review:-

“A court can review a judgment for any other sufficient reason. In the case of *Sadar Mohamed vs Charan Singh and Another* [19] it was held that any other sufficient reason for the purposes of review refers to grounds analogous to the other two (for example error on the face of the record and discovery of new matter. Mulla in the Code of Civil Procedure [20] (writing on Order 47 Rule 1 of the Civil Procedure Code of India), (the equivalent of our Order 45 Rule 1), states that the expression ‘any other sufficient reason’...means a reason sufficiently analogous to those specified in the rule. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out..., would amount to an abuse of the liberty given to the tribunal under the Act to review its judgement. [21]

I also find useful guidance in *Tokesi Mambili and others vs Simion Litsanga* [22] where they held as follows: -

In order to obtain a review an applicant has to show to the satisfaction of the court that there has been discovery of new and important matter or evidence which was not within his knowledge or could not be produced at the time when the order to be reviewed was made. An applicant may have to show that there was a mistake or error apparent on the face of the record or for any other sufficient reason.

Where the application is based on sufficient reason it is for the Court to exercise its discretion.”



14. In the present case, the application for stay of execution was granted on condition that the objector would deposit half of the decretal amount. Security of costs is one of the conditions that have to be met before granting an order of stay of execution. This is in line with the case of *Francis Njoroge v Stephen Maina Kamore* [2018] eKLR where the court stated;

“One of the key elements a court is bound to consider when granting an order for stay is the security given by the Applicant for the due performance of the decree. And it is upon such consideration that a court of law will make a determination on the same. This court well considered the Appellant’s arguments on the same and made an order for the Appellant to deposit one half of the decretal sum in a joint interest earning account. This order was made after considering the arguments by the Respondent that he has a decree which he would like to execute versus the Appellant’s plea that he was in financial difficulties. Indeed, if parties were allowed to seek review of decisions on grounds that they are not in a position to carry out the orders sought to be reviewed, or rather that the orders are not convenient to them, then a dangerous precedent would be set in which court decisions that ought to be examined on appeal would be exposed to attacks in the courts in which they were made under the guise of review.”

15. The court is of the view that the order for depositing half of the decretal amount was made in satisfaction of the conditions for stay of execution. The stay of execution pending appeal was sought by the applicant herein as an objector. The objector was aggrieved by the decision of the court which favored the decree holder as against it.
16. The judgment debtor had no interest in the application and therefore it would be prejudicial to require the judgment debtor to deposit the decretal amount. While the court appreciates the applicant’s argument that the applicant was not a party to the proceedings my take is that the same could be a good ground for appeal and not review.

Determination and Order

17. For the reasons stated herein, the court is not persuaded that the applicant has offered sufficient reason within the meaning of Order 45 Rule 1 of the *Civil Procedure Rules* for review of the Orders of November 24, 2022. I find no merit in the application and I therefore dismiss it with costs.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 19TH DAY OF MAY 2023.

F. MUGAMBI

JUDGE

Court Assistant: Ms. Lucy Wandiri.

