



**Globe Autospares & Accessories Limited v Housing Finance Limited & another (Commercial Case E860 of 2021) [2023] KEHC 19335 (KLR) (Commercial and Tax) (14 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19335 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E860 OF 2021  
DO CHEPKWONY, J  
JUNE 14, 2023**

**BETWEEN**

**GLOBE AUTOSPARES & ACCESSORIES LIMITED ..... PLAINTIFF**

**AND**

**HOUSING FINANCE LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**BENJAMIN K. SILA T/A LEGACY AUCTIONEERING  
SERVICES ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling is in respect to the Notice of Motion Application dated 27th October 2022 filed under Article 50 of the [Constitution of Kenya](#) and Order 45 Rule 1 of the [Civil Procedure Rules 2010](#). The Application seeks the following orders:-
  - a. Spent;
  - b. The Honourable Court be pleased to review and set aside the following Orders given on July 21, 2022;
    - i. That the Respondent is hereby restrained from further subdividing registering or changing registration in ownership in all that parcel of land known as Kiambu Municipality Block 11/243.
    - ii. That status quo to prevail over the said property pending the determination of the dispute through arbitration.





orders were not made in any error and the application dated October 27, 2022 should be dismissed with costs.

9. The parties were directed to dispose of the application by way of written submissions. Both parties filed their respective submissions.

### **Analysis and Determination**

10. In determining the application, I have considered the submissions of both parties and the authorities filed therein. It is this Court's view that before going into the merit of the application, it is important to outline the legal framework for applications for review. It is enshrined under Section 80 of *Civil Procedure Act* and Order 45 of the Civil Procedure Rules 2010. They state:-

“[80]. 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.

Order 45 Rule 1 of the *Civil Procedure Rules, 2010* provides as follows:-

“(45) Rule 1(1) 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.”

11. From Order 45 of the *Civil Procedure Rules*, it is evident that the conditions for review are:-

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; or

c. There were other sufficient reasons; and

d. The application must have been made without undue delay.

12. In this case, the relevant ground is error on the face of the record as there has been no discovery of new and important matter which was not within the knowledge of the Applicant. It is note-worthy that on March 24, 2022 when the matter underwent screening for mediation, it was marked not suitable. It



was therefore an error on the face of the record for the court to order that the matter to be mentioned before the Deputy Registrar for an agreement on how the arbitration would proceed when there wasn't any mediation or arbitration pending in the suit.

13. In the ruling of July 21, 2022 at Paragraph 11, the Court stated:-

“From the reading of the above cited decisions, I find that that even though the Plaintiff/Applicant in the instant case has raised a clear case that would warrant grant of injunction to stop a public auction, what is meant to be stopped has already happened, hence my orders are tied as to the orders sought.”

14. The court went ahead to issue the orders at Paragraph 12 based on the notion that there was an arbitration proceeding in the matter and the status quo orders were issued pending the determination of the dispute through arbitration which was not the case. The status quo orders issued are hereby set aside.

15. In the resultant, this Court therefore allows the application dated October 27, 2022 and make the orders:-

- a. The following orders made under Paragraph 12 of the Ruling dated July 21, 2022 be and are hereby set aside;
  - i. That the Respondent is hereby restrained from further subdividing registering or changing registration in ownership in all that parcel of land known as Kiambu Municipality Block 11/243.
  - ii. That status quo to prevail over the said property pending the determination of the dispute through arbitration.
  - iii. Parties can therefore proceed to fix a mention date before the Deputy Registrar and agree on how to proceed with the arbitration.
- b. The Applicants are hereby granted costs of the application.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 14<sup>TH</sup> DAY OF JUNE, 2023.**

**D. O. CHEPKWONY**

**JUDGE**

