



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL & ADMIRALTY DIVISION**  
**CIVIL SUIT. NO.249 OF 2006**

**BULK MEDICAL LIMITED**

**(IN RECEIVERSHIP) .....PLAINTIFF/APPLICANT**

**VERSUS**

**PARAMOUNT UNIVERSAL BANK LTD.....1<sup>ST</sup> DEFENDANT**

**HARVEEN GADHOKE.....2<sup>ND</sup> DEFENDANT**

**DANIEL NDONYE..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The Motion dated 30<sup>th</sup> September, 2015 seeks the following prayers:-

2. THAT pending hearing and determination of this Application, this honourable Court be pleased to stay its Orders made on 19<sup>th</sup> July 2012 by the Honourable Justice J. Njagi dismissing this suit.

3. THAT pending hearing and determination of Civil Appeal 9 of 2010, this Honourable Court be pleased to stay its Orders made on 19<sup>th</sup> July 2012 by the Honourable Justice J. Njagi dismissing this suit and reinstate the same for hearing on merit.

4. THAT this Honourable Court be pleased to set aside its orders made on 19<sup>th</sup> July 2012 by the Honourable Justice J. Njagi dismissing this suit and reinstate the same for hearing on merit.

5. THAT cost of this application be borne by the Respondents.

2. On 18<sup>th</sup> March, 2009 Kimaru J. made the following Orders:-

“I therefore direct the Plaintiff to furnish security to the sum of Kshs.1.5. million to the 1<sup>st</sup> Defendant and the sum of Kshs.2.5. million as security for costs to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. The said sums shall be deposited in a joint interest earning account in a reputable bank in the names of Counsel for the Plaintiff and each counsel for the respective Defendants, as the case may be, within thirty (30) days of today’s date. Pending compliance with the above order, the proceedings herein shall be stayed”.

3. The Plaintiff, it would seem, failed to furnish security as ordered or at all and upon application by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants Njage J. ruled as follows on 19<sup>th</sup> July, 2012:-

“By its failure to obey the order to deposit security for costs, the Plaintiff invited upon itself the wrath of Order xxv Rule 5(1). Since that rule does not accord the court any discretion, I hereby order that this suit be dismissed with Costs. The Plaintiff will also bear the costs of this Application”.

4. It is true that only the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants moved the Court for the Dismissal Order but the Honourable Judge dismissed the entire suit. This Court is asked to find that in so far as there was no Application by the 1<sup>st</sup> Defendant seeking the said Orders then the Order benefiting it is per incuriam. For that reason the Court is asked to Review the Order and to set it aside.

5. This Court has a short answer to that request. Even if I were to find that there is merit for the Review and Setting aside of that Order, I would nevertheless decline to grant the prayer because of the unexplained delay in the bringing of the Application. A suitor seeking Review of an Order must act without unreasonable delay and Order 45 Rule 1 is explicit on this:

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

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review”.

6. The Order sought to be reviewed and set aside was made on 19<sup>th</sup> July 2012. The Application was brought on 30<sup>th</sup> September 2015. This is more than three years later. There is no reason at all proffered for the lateness in moving the Court for Review and in the circumstances the delay must be held to be inordinate and unreasonable.

7. As to the second limb for stay pending the hearing and determination of Civil Appeal No. 9 of 2010, this Court was told that the Appeal was withdrawn on 24<sup>th</sup> October 2016. That event overtook the need for the Order.

8. The entire Application of 30<sup>th</sup> September 2015 is therefore dismissed with costs.

**Dated, Signed and Delivered in Court at Nairobi this 10<sup>th</sup> Day of February, 2017.**

**F. TUIYOTT**

**JUDGE**

**PRESENT;**

Ojiambo h/b for Kingara for Plaintiff

Macharia h/b for Ngatia for 1<sup>st</sup> Defendant

Alex - Court Clerk