



REPUBLIC OF KENYA



**KENYA LAW**  
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**Fitidis Group of Companies & another v Civicon Company Limited (Civil Case 56 of 2015) [2025] KEHC 13724 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13724 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CIVIL CASE 56 OF 2015  
EN MAINA, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**FITIDIS GROUP OF COMPANIES ..... 1<sup>ST</sup> PLAINTIFF**

**LIGHT STEEL BIULDING KENYA LIMITED ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**CIVICON COMPANY LIMITED ..... DEFENDANT**

**RULING**

1. This ruling pertains to the Notice of Motion dated 26<sup>th</sup> May, 2025 which seeks the following orders;
  - a. Spent
  - b. Spent
  - c. This Honourable Court be pleased to review the orders issued on 27<sup>th</sup> January 2022 as follows;
    - i. The finding in the ruling regarding dismissal of the Defendant/Applicant's Notice of Motion application dated 16<sup>th</sup> December 2021 be set aside.
    - ii. Defendant/Applicant's be granted a last chance to defend the suit on condition that it deposits half of the decretal sum in an interest earning account maintained by advocates for both parties within 30 days from the date of the Court ruling or to provide a bank guarantee from a reputable international institution for half of the decretal sum within 30 dayd from the order
  - d. The Honourable Court be please to stay any execution proceedings against the Defendant/Applicant that arises from the judgment of the Court of 5<sup>th</sup> February 2020 and all subsequent consequential proceedings.



2. Through a supporting affidavit sworn by Trevor Okoth, the Applicant contends that it did not comply with the conditional orders because of extreme financial challenges including attempts by creditors to place the company in receivership but they have since rebuilt and is now ready to honour the conditions imposed by the court and fully defend the suit against it. The Applicant indicated that he is willing to deposit half the decretal sum as a condition for setting aside.
3. The application was opposed through a Replying Affidavit sworn by Christakis Fitidis dated 20<sup>th</sup> June, 2025 where he deposes that following the judgment delivered on 5<sup>th</sup> January 2020, a decree was extracted on 5<sup>th</sup> February 2020 and served upon the Applicant on 24<sup>th</sup> July 2020. Subsequently, following an application by the 1<sup>st</sup> Respondent, a garnishee nisi was issued and despite service of the mention order, the Applicant failed to appear in court on 27<sup>th</sup> January 2021 and the garnishee nisi was made absolute. The Applicant then filed an application for setting aside and Justice Odunga, as he then was, heard and determined it and granted the order upon fulfilment of certain conditions on 22<sup>nd</sup> January 2022. The said conditions have never been met.
4. The 1<sup>st</sup> Plaintiff/ Respondent has managed to get a further garnishee resulting in a warrant dated 14<sup>th</sup> October 2024. It was deposed that the garnishee filed an application for stay at the Court of Appeal vide an application dated 29<sup>th</sup> May 2024 seeking stay of execution of the orders issued on 27<sup>th</sup> January 2022 which was dismissed with costs on 24<sup>th</sup> September 2024. It was contended that there was no evidence of change in fortune for the Applicant and the court was urged to dismiss the application as it was an abuse of the court process,
5. The application was canvassed by way of written submissions.
6. The Defendant/Applicant relied on Section 80 of the *Civil Procedure Act*, Order 45 Rule 1 and the cases of Republic v Cabinet Secretary for Interior and Co-Ordination of National Government Ex Parte Abullahi Said Sald [2019] eKLR and submitted that this court had the power to review its orders. That the non-compliance with the conditional orders issued by Hon. Justice G. V Odunga on 27<sup>th</sup> January 2025 was not deliberate but rather, it was caused by procedural lapse. We urge this Honourable Court not to allow the dismissal of the application to stand solely based on that. It was submitted that the Applicant has since rebuilt and is now able and willing to abide by the orders of the court; that the Respondents would not be prejudiced if the orders sought were granted. It was the Applicant's contention that the delay is not unreasonable and that the reasons given amounted to sufficient ground for review. Reliance was also placed on the case of Utalii Transport Company Limited & 3 others vs. NIC Bank Limited & another [2014] eKLR.
7. Lastly, it was submitted that the Applicant would suffer great prejudice unless the orders sought are granted; that execution would mean the Applicant is condemned unheard, despite having previously been granted conditional leave to defend the suit.

### **Analysis and determination**

8. This court has considered the Application, the response thereto and the submissions on record. The application before this court is one for review of an order which granted a conditional stay of execution to the Applicant but which condition it did not fulfil. From the outset I must say that this application is an abuse of the court process.
9. I agree with the Defendant/ Applicant to the extent that review is governed by Section 80 of the *Civil Procedure Act* which provides that;

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.

10. Order 45 Rule 1 of the Civil Procedure Rules, 2010 provides as follows;

- “(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.”

11. The Supreme Court of India in the case of *Ajit Kumar Rath vs State of Orisa & Others*, 9 Supreme Court Cases 596 at Page 608 espoused the scope of review wherein as follows -

“The power can be exercised on the application of a person on 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 order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for stabling it. It may be pointed out that the expression “any other sufficient reason” ..... means a reason sufficiently analogous to those specified in the rule”

12. In the case of *Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya* [2019] KEHC 6379 (KLR) substantively discussed the purview of review in Kenya and after analysing a number of cases held as follows;

“The principles which can be culled out from the above noted authorities are:

- i. A court can review its decision on either of the grounds enumerated in Order 45 Rule 1 and not otherwise.
- ii. The expression “any other sufficient reason” appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds.



- iii. An error which is not self-evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of record justifying exercise of power under Section 80.
- iv. An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
- v. A decision/order cannot be reviewed under Section 80 on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.
- vi. While considering an application for review, the court must confine its adjudication with reference to material, which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.
- vii. Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.
- viii. A mistake or an error apparent on the face of the record means a mistake or an error, which is prima-facie visible and does not require any detail examination. In the present case the petitioner has not been able to point out any error apparent on the face of the record.
- ix. Section 80 of the Civil Procedure Code provides for a substantive power of review by a civil court and consequently by the appellate courts. The words occurring in Section 80 mean subject to such conditions and limitations as may be prescribed thereof and for the said purpose, the procedural conditions contained in Order 45 Rule 1 must be taken into consideration. Section 80 of the Civil Procedure Code does not prescribe any limitation on the power of the court, but such limitations have been provided for in Order 45 Rule 1.
- x. The power of a civil court to review its judgment/decision is traceable in Section 80 CPC. The grounds on which review can be sought are enumerated in Order 45 Rule 1.”

13. In this case, the order sought to be reviewed was delivered on 27<sup>th</sup> January 2022, the reason given for review is that the company was facing financial challenges leading to non-compliance with the said orders but now they are financially stable. No error appin the order of the court is alleged. There is no allegation of an error apparent on the face of the order. Neither is there any allegation of discovery of new evidence which are the factors which form the cornerstone of review. The alleged new development cannot not form the basis for review. Perhaps it could be the ground for extension of time but review not at all.

14. It is also evident that the Applicant has not come to this court with clean hands. This is given that he did not comply with the conditions attached to the stay. Instead, the Applicant has made several attempts to set aside the orders in vain. It has persisted in demonstrating the same indolence that led to the exparte judgment entered against it. If indeed it had difficulty fulfilling the condition it should have approached the court immediately for extension of time but not waited until three years later as



it has done. In the case of Republic v County Chief Officer, Finance & Economic Planning, Nairobi City County (Ex Parte David Mugo Mwangi) [2018] eKLR, the Court observed that, and I agree:

“ 30. It must however be remembered that Court orders are not made in vain and are meant to be complied with. If for any reason a party has difficulty in complying therewith, the honorable thing to do is to come back to court and explain the difficulties faced by the need to comply with the order. Once a Court order is made in a suit the same is valid unless set aside on review or on appeal

15. Similarly, in the case of Econet Wireless Kenya Ltd vs. Minister for Information & Communication of Kenya & Another [2005] 1 KLR 828, the court stated:

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a Court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void”.

15. I think I have said enough to show that the application for review is not merited. It is dismissed.

16. Having found that the application for review is an abuse of the court process I am left with nothing to warrant this court to exercise its discretion to stay execution of the decree in favour of the Applicant who is clearly trying to have a second bite at the cherry. That limb of the application is also dismissed.

17. The costs of the application are awarded to the Respondent.

Orders accordingly.

**RULING SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 25TH DAY OF SEPTEMBER 2025.**

**E. N. MAINA**

**JUDGE**

In the Presence of:

Mr Adogo, Advocate for the Respondent.

Mr. Komen, Advocate HB for Mr. Wanyama for the Applicant.

Geoffrey Court Assistant.

