



**Murunga Investments Limited v Paulsa Bins Limited (Civil Appeal
E428 of 2025) [2025] KEHC 13894 (KLR) (Civ) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13894 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL APPEAL E428 OF 2025**

**TW CHERERE, J
SEPTEMBER 25, 2025**

BETWEEN

MURUNGA INVESTMENTS LIMITED APPELLANT

AND

PAULSA BINS LIMITED RESPONDENT

RULING

1. By a ruling delivered on 29th May 2025, this Court dismissed the Appellant’s Notice of Motion dated 17th April 2025. The application sought an order of stay of execution of the judgment and decree delivered on 20th March 2025 in Milimani CMCC E1644 of 2021, pending the hearing and determination of the appeal. The Court found that although the Appellant had deposited security as directed, it had failed to demonstrate that it would suffer substantial loss if stay was not granted.
2. The present application is the Appellant’s Notice of Motion dated 22 July 2025. It is brought under Order 42 Rule 6, Order 45 Rule 1 and 2 of the *Civil Procedure Rules*, and Sections 1A, 1B and 3A of the *Civil Procedure Act*. The Appellant seeks a review of the ruling of 29 May 2025 and an order of stay of execution pending appeal. In the alternative, the Appellant seeks leave to liquidate the decretal sum by way of instalments.
3. The application is supported by the affidavit of Susan Njeri Kibue, a director of the Appellant, sworn on 22nd July 2025. She deposes that on 18th July 2025, the Respondent instructed Mwose & Company Auctioneers who proclaimed the Appellant’s goods, notwithstanding that the Appellant had already deposited the sum of KES 700,000 in court as security. It is contended that unless stay is granted, the Respondent will proceed with execution and the appeal will be rendered nugatory.
4. The Respondent opposed the application through grounds of opposition dated 21st August 2025. The Respondent contends that the prayers sought were conclusively determined in the earlier ruling of



29th May 2025. Respondent further argues that the application does not meet the threshold for review under Order 45. It is urged that no new or important matter has been disclosed, no error apparent on the face of the record identified, and no sufficient reason demonstrated to warrant a review. The Respondent further states that since the Appellant/Applicant has already deposited security in court, any sums due can be refunded should the appeal succeed, and therefore the appeal cannot be rendered nugatory.

Issues for determination

5. From the application, affidavit and grounds of opposition, the issues that arise are:
 - a. Whether the application satisfies the threshold for review under Order 45 Rule 1 of the *Civil Procedure Rules*
 - b. Whether there are new or sufficient circumstances to justify stay of execution pending appeal
 - c. Whether the alternative prayer for settlement by instalments is merited.

Review under Order 45

6. Under Order 45 Rule 1, an applicant seeking review must demonstrate:
 - (a) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within its knowledge at the time the decree was passed; or
 - (b) error apparent on the face of the record; or
 - (c) any other sufficient reason.
7. The “new matter” cited is the proclamation of the Appellant’s goods on 18th July 2025. In my view, this does not qualify as discovery of new evidence but is merely a consequence of the execution which was foreseeable once the earlier application was dismissed. It cannot therefore be a ground for review.
8. The Applicant has also not pointed to any error apparent on the face of the ruling of 29th May 2025. That ruling applied the settled test under Order 42 Rule 6(2), particularly on the requirement of demonstrating substantial loss, which the Appellant failed to do.
9. It is trite that review cannot be used as an appeal in disguise or to re-litigate matters already conclusively determined. In *National Bank of Kenya Ltd v Ndungu Njau* [1997] eKLR, the Court of Appeal emphasized that:

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court... It is not sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law.”
10. I therefore find that the application does not meet the threshold for review.

Stay of Execution Pending Appeal

11. The Appellant also seeks, in the alternative, a fresh order of stay of execution. That prayer must be considered against the backdrop of the ruling of 29th May 2025 where the court found that no substantial loss had been demonstrated. The present application seeks the same relief on essentially the same grounds, amounts to an attempt to have a second bite at the cherry. It does not introduce any material change of circumstances that would justify a departure from the earlier finding. As was



emphasized in *Pop-In (Kenya) Ltd & 3 Others v Habib Bank AG Zurich* [1990] eKLR, there must be an end to interlocutory applications, and parties should not be permitted to re-litigate matters already determined.

Payment by Instalments

12. The Appellant has sought, in the further alternative, leave to liquidate the decretal sum in instalments. The power to grant such relief is discretionary under Order 21 Rule 12 of the *Civil Procedure Rules*, but it must be exercised judiciously.
13. The Court of Appeal in *Keshavji Jethabbhai & Bros Ltd v Saleh Abdulla* [1959] EA 260 held that a debtor seeking indulgence should show bona fides by arranging prompt payment of a fair proportion of the debt and should be prepared to abide by reasonable terms imposed by the court. In *Diamond Star General Trading LLC v Ambrose D. O. Rachier t/a Rachier & Amollo Advocates* [2018] eKLR, the Court emphasized that mere hardship is not a sufficient reason and that the debtor must demonstrate inability to pay in lump sum and a reasonable proposal for settlement.
14. Similarly, in *A. Rajabali Alidina v Remtulla Alidina & Another* [1961] EA 565, it was underscored that the discretion to allow payment by instalments must balance the interests of the decree holder and the debtor, ensuring that the decree holder is not deprived of the fruits of judgment without good cause.
15. The Applicant has placed no evidence before the Court of its financial position or inability to pay the decretal sum at once. Beyond bare assertions of hardship, no accounts, statements, or credible proposal for payment has been offered. Applying the above principles, I find no basis to exercise the discretion in favour of the Appellant.

Conclusion

16. In the result, I find that the Notice of Motion dated 22nd July 2025 is without merit and it is accordingly dismissed with costs to the Respondent.
17. For the avoidance of doubt, the dismissal of the application does not affect the pendency of the appeal. This appeal shall accordingly be mentioned before the Deputy Registrar on 02nd October 2025 to confirm the filing and the service of the record of appeal.

DELIVERED AT NAIROBI THIS 25TH DAY OF SEPTEMBER, 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Ubah

For Appellants - Mr. Ng'ang'a for Njoroge Ng'ang'a & Co. Advocates

For Respondent - Mr. Nyaga for Njeru Nyaga & Co. Advocates

