



Eureka Country Resort Limited v Pentaclassics Limited (Miscellaneous Civil Application E1170 of 2025) [2025] KEHC 15301 (KLR) (Civ) (30 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15301 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION E1170 OF 2025
NW SIFUNA, J
OCTOBER 30, 2025**

BETWEEN

EUREKA COUNTRY RESORT LIMITED APPLICANT

AND

PENTACLASSICS LIMITED RESPONDENT

RULING

1. By this Application, the Applicant Eureka Country Resort Limited Which Is A Judgment-debtor In Milimani MCCC NO. E3784 OF 2023, that is in the Subordinate Court, is seeking to set aside the judgment. The Application is also seeking a stay of the said judgment.
2. The Application is apparently invoking Article 165 of the Kenya Constitution. In which *the Constitution* grants he High Court supervisory power over subordinate courts; by which to call for any record of any subordinate court and peruse it. The Article states as follows:

Article 165 (6)

“The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court”

Article 165 (6)

“For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court, person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”



3. The Respondent has opposed the Application and raised a Preliminary Objection on the grounds that the Application is seeking a stay of execution of judgment against which there is no Appeal or intended Appeal. Further that the Application is seeking an interim order to set aside the said judgment pending the hearing and determination of the Application.

Analysis and Determination

4. The Application was argued orally, with each party spiritedly urging its position. I have considered the Application and the Objection to it, as well as the oral submissions by each party.
5. While in criminal proceedings, this supervisory power has been imported and formalized by Section 362 and 364 of the Criminal Procedure Code (Cap 75 Laws of Kenya), it is not the same with civil proceedings. As there is no corresponding provision in the *Civil Procedure Act* (Cap 21 Laws of Kenya) or in the Civil Procedure Rules made thereunder.
6. In civil proceedings, save for supervisory visits to the subordinate courts, the High Court has not actively exercised this supervisory power over the decisions and orders of the subordinate courts. Unlike in criminal matters where revision applications to the High Court are common place, it has not been the same in civil matters. However, there now seems to be increasing applications to the High Court in respect of on-going or concluded civil proceedings and civil suits. Increasing resort by grievants, to this Court's supervisory jurisdiction, instead of review and appeal.
7. In many of them, the grievants are in their Applications urging the High Court to interrogate the merits of the subordinate courts' decisions and orders and overturn the same on the basis of the merits. This is clearly the scope of Appeal. Hence such are backdoor appeals disguised as supervision Applications. This is unacceptable and amount to abuse of the court process.
8. Given the nature of civil proceedings, grievances arising from the orders and decisions of subordinate courts are usually pursued through review and appeal. Such that a party aggrieved by an order or decision of a subordinate court, either files a review application before the same court, or files an appeal to the High Court or other superior court of co-ordinate jurisdiction. Ofcourse depending on the subject matter of the suit, and the provisions of Article 162 of *the Constitution*.
9. This has been the usual order of things, and this is what the Applicant ought to have done. This course of action is not harmful and has all this time served justice well. As there are no provisions in the *Civil Procedure Act* and Rules. In civil proceedings therefore, a grievant from a subordinate court's order or decision, should approach the High Court by way of an Appeal. Which Appeal is usually lodged by filing a Memorandum of Appeal.
10. From the foregoing, I hold that the Applicant having chosen to approach this Court by way of an Application under the supervisory jurisdiction, instead of by an Appeal, I politely decline the invite to, such Application, interfere with the subordinate court's said judgment. Hence the Preliminary Objection is hereby upheld, while Application is hereby dismissed with costs to the Respondent.
11. The Respondent's costs of this Application, are hereby assessed at Ksh 10,000=.

DATED AND DELIVERED AT NAIROBI ON THIS 30TH DAY OF OCTOBER 2025.

PROF (DR) NIXON SIFUNA

JUDGE

