



**Ebrahim v Issa (The Executor of the Estate of Ramzan Ebrahim) (Commercial Case 198 of 1999) [2025] KEHC 14979 (KLR) (Commercial and Tax) (21 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14979 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE 198 OF 1999  
JWW MONG'ARE, J  
OCTOBER 21, 2025**

**BETWEEN**

**AZIZ EBRAHIM ..... PLAINTIFF**

**AND**

**MIRZA HAIDARALI ISSA (THE EXECUTOR OF THE ESTATE OF RAMZAN EBRAHIM) ..... DEFENDANT**

**RULING**

1. On 30<sup>th</sup> September 2020, the Court (Muigai J.,) delivered judgment (“the Judgment”) in this matter and issued the following final orders:
  1. The Plaintiff and Defendant and/or through respective Advocates on record shall cause joint/separate reconciliation of accounts within 3 months from date of delivery of the Judgment.
  2. The Plaintiff partly performed terms of the contracts and the Defendant breached terms of the contracts.
  3. If agreeable the outstanding amount of C\$575,000 after reconciliation of accounts shall be paid to the Defendant on immediate transfer of ½ share of Wazir House as agreed.
  4. If agreeable the outstanding amount of purchase of the Defendant portion of Ebrahims business shall be paid by Plaintiff and immediate transfer of 3% shares of Alberta Co Ltd made by the Defendant back to the Plaintiff.
  5. The 6% share of Alberta Co Ltd shall within 90 days of Judgment of the Court be transferred back to Mrs. Mherbanu Noorali Ebrahim Mavani. The Defendant has no risk of losing ½ share of Wazir House, he retains title of whole property and has title document, he received part



payment of C\$575,000 from the Plaintiff as shown by documents filed and therefore no need for collateral and it would amount to unjust enrichment.

6. If parties fail to agree and perform fully the terms of the contracts of 18<sup>th</sup> November 1995, then they shall revert to status quo ante; the Defendant to release and transfer back 9% shares of Alberta Co Ltd to Plaintiff's family and refund funds paid so far with regard to Wazir House and Ebrahims Ltd then retain both properties, Wazir House/Ebrahims & Co. Ltd.
  7. Each party to bear own Costs.
  8. Any aggrieved party is at liberty to apply to Court.
2. The Plaintiff, through the Notice of Motion dated 7<sup>th</sup> November 2024 now seeks to review and set aside part of the Judgment and its orders and for the Court to clarify what it meant by "status quo ante" as mentioned in the Judgment and to further clarify and calculate the interest that has accrued on the disputed assets since the original agreement was made in 1995. The application is grounded on the Plaintiff's supporting affidavit sworn on 7<sup>th</sup> November 2024 where he depones that the order to transfer shares in a company called Alberta Limited is impossible because the company closed down around the year 2018, information the Court was not aware of during the original trial.
  3. The Plaintiff further contends that the Judgment is ambiguous and contains errors because it did not specify what should happen if the parties failed to submit their statements of account for reconciliation within the three-month period ordered by the Court. The Plaintiff claims he submitted his, but the Defendant did not. Further, the Plaintiff states that the Judgment did not address the accrued interest on the payments and shares from 1995 to 2020, making a return to the "status quo ante" unfair and impractical.
  4. In response, the Defendant has filed the replying affidavit sworn on 4<sup>th</sup> March 2025. He avers that the Court has already made its final decision and cannot re-open the case and that the Court is now functus officio and it can only ensure the Judgment is enforced, not re-examine the facts or issues. That the specific issues the Plaintiff is raising like the reconciliation of accounts and the meaning of "status quo ante" have already been heard and finally decided in a previous ruling by the Court. Therefore, the Plaintiff is barred from re-litigating them.
  5. On reconciliation of accounts, the Defendant states that the Plaintiff's claim that his accounts were "unchallenged" is untrue. The Defendant states that he had previously contested his reconciliation in an affidavit filed in August 2022 and that a ruling from September 2024 explicitly addressed this failure to agree on accounts and enforced the default order from the Judgment. On "error apparent on the record", the Defendant argues that the Plaintiff's complaints do not qualify as a simple, self-evident error. Instead, they are an attempt to launch an indirect appeal against the Judgment, which is not permitted in a review application. On clarifying the "status quo ante", the Defendant contends that the Judgment was already clear: if the parties fail to agree, they revert to the original position—the Defendant keeps Wazir House and must refund the payments made by the Plaintiff and that the September 2024 ruling reaffirmed this meaning.
  6. On the closure of Alberta Limited, the Defendant dismisses the Plaintiff's claim that the company's closure is "new evidence" warranting a review. He states that as a shareholder and director of the company, this was information specially within the Plaintiff's knowledge at the time of the original trial, and he provided no reason for not disclosing it then.
  7. The Defendant accuses the Plaintiff of acting in bad faith and abusing the Court process by re-litigating issues that have already been decided, filing the current application on the same day as a scheduled



"without prejudice" meeting to discuss the matter, thereby scuttling that meeting and as such, the Defendant prays that the Plaintiff's application be dismissed with costs.

8. The parties have supplemented their arguments by filing written submissions which I have considered and I will be making relevant references to them in my analysis and determination below.

### **Analysis and Determination**

9. I have gone through the application, the response and the submissions. I note that the Court is being called to determine whether the Judgment is to be reviewed and/or partially set aside. The principles governing the exercise of discretion to review a decree or order are now settled. Under section 80 of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) and Order 45 of the Civil Procedure Rules, an Applicant is required to show either that there was an error apparent on the face of record or that there has been discovery of new and important matter which was not available despite the exercise of due diligence or for any other sufficient reason for the Court to review.

10. The Plaintiff's application is anchored on an apparent error on the face of the record of the Judgment and for any other sufficient reason. The Court of Appeal in *National Bank of Kenya Limited v Ndungu Njau* [1996] KLR 469 explained what constitutes an error of law apparent on the face of the record and the scope of review. The court stated thus;

"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. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a 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 and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be ground for review."

11. As stated, the Plaintiff has stated that the apparent error in the Judgment is borne out of the impossibility to comply with the orders in respect of Alberta Limited, alleged errors in respect of the reconciliation, accrued interest and apparent lack of clarity of the "status quo ante". Going through the record, I do not agree with the Plaintiff's contentions for a number of reasons. First, the issues being raised by the Plaintiff now are not novel and the Plaintiff admits in his submissions that they have been brought before the Court post-judgment and they were dismissed in the ruling delivered on 10<sup>th</sup> September 2024. The Court (Chepkwony J.) was explicit that "... It is important to reiterate that this Court, having delivered its final judgment, cannot now delve into the substantive issues of the case once again. The doctrine of *functus officio* restricts the Court's role to merely ensuring the judgment is perfected or enforced. It cannot entertain a fresh examination of the contested facts or the reconciliation of accounts as the Plaintiff now seeks."

12. On the meaning of the status quo ante, the Court was also explicit that: "Since the parties have failed to reach an agreement as required by the judgment, the Court must now enforce the default order stipulated in the judgment and more specifically Order (6). This order clearly mandates that in the absence of an agreement, the parties are to revert to the status quo ante. This means that the Defendant retains the Wazir House, and the payments made by the Plaintiff in relation to the Wazir House and Ebrahims & Company Ltd are to be refunded. The Court then proceeds to dismiss the application dated 21<sup>st</sup> April, 2021 and in accordance with Order (6) of the judgment dated 30<sup>th</sup> September 2020, the parties shall revert to the status quo ante as outlined in the judgment."



13. In his submissions, the Plaintiff is faulting the aforementioned ruling but curiously, he has neither appealed nor sought a review of the same. In any case, the principle of judicial comity does not allow me to fault or correct substantive findings of a concurrent Court. In my view, the Plaintiff is clearly attempting to have a second bite at the cherry. The Supreme Court in *Parliamentary Service Commission v Wambora & 36 others* [2018] KESC 74 (KLR) explained the scope of a review application and a party's attempt to re-litigate issues as follows:

[30] We further add that the review window so envisaged is not meant to grant an applicant a second bite at the cherry. It is not an opportunity for an applicant to re-litigate his/her case. Sight should never be lost of the shore that in an application for review, like the one before the Court, at the core of the application is the Court's exercise of discretion. It is the Court/Judge's decision that is impugned and not the substantive application being re-argued. Hence an applicant is under a legal burden to lay a basis, to the satisfaction of this Court, that in exercise of its discretion, the limited Bench acted whimsically or misdirected itself in reaching the decision it made.

14. Second, on the issue of accrued interest, I am in agreement with the Defendant's submissions that this was never pleaded or sought by the Plaintiff in its plaint before the Court and that it is being introduced as a new issue now. Such cannot be countenanced in an application for review. Third, on the ground that the company, Alberta was closed down in 2018, I find that this was information that was always available to the Plaintiff at the time before the judgment was delivered as he was a shareholder and director of the company. With diligence, he ought to have made the claimed information available to the Court. This is therefore not new evidence that can enable the Court review the Judgment.

15. It is for the above reasons that I find that this is not an appropriate case for this Court to exercise its residual jurisdiction of review of its own decision as the Plaintiff has not satisfied the required principles set out in section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Rules.

### **Conclusion and Disposition**

16. Consequently, the Plaintiff's application dated 7<sup>th</sup> November 2024 is dismissed with costs to the Defendant assessed at Kshs.50,000/=. It is so ordered.

**DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21<sup>ST</sup> DAY OF OCTOBER 2025**

.....

**J.W.W. MONGARE**

**JUDGE**

In The Presence of

N/A for the Applicant.

Ms. Leyla Ahmed holding brief for Mr. John Ohaga SC for the Respondent.

Amos - Court Assistant

