

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL AND TAX DIVISION
CIVIL SUIT NO. E743 OF 2021

**MERIDIAN ACCEPTANCES
LIMITED.....PLAINTIFF/APPLICANT**

-VERSUS-

**JAMES NDWIGA MUCHUNGU.....1ST
DEFENDANT**

**LISA MUMBI NDWIGAH.....2ND
DEFENDANT**

**IAN NYAGA NDWIGAH.....3RD
DEFENDANT**

**JUDITA WARUE NDWIGA.....4TH
DEFENDANT**

**TREVOR SAWAYA NDWIGA.....5TH
DEFENDANT**

RULING

1. This ruling is in respect of the Notice of Motion dated 22nd July 2025.
2. The Application is premised on the grounds on the face of it and is supported by the affidavit of Bernard Odote sworn on 22nd July 2025.
3. The Respondents oppose the Application vide a replying affidavit of James Ndwiga sworn on 28th July 2025.
4. The Application was canvassed by way of written submissions which parties duly filed.
5. Having considered the Application, the response and the parties' respective submissions, the sole issue that falls for

this Court's determination is whether the application is merited.

6. I shall first address the Respondent's objection to the competence of the Supporting Affidavit sworn by Benard Odote. The Respondents contend that the deponent is a stranger to these proceedings, having identified himself as a director of *House of Procurement Ltd* without providing a resolution or letter of authority to demonstrate his capacity to swear an affidavit on behalf of the Plaintiff company.

7. Upon perusal of the record, I note that a CR12 produced indicates House of Procurement Ltd as a director/shareholder of the Plaintiff. The legal position on this issue was aptly stated in the case of **Makupa Transit Shade Limited & Another vs Kenya Ports Authority & Another [2015] eKLR** the Court stated thus;

"In our view, the Authority, as with other corporate bodies, has its affidavits deponed on its behalf by persons with knowledge of the issues at hand who have been so authorized by it. It was therefore sufficient for the deponents to state that "they were duly authorized." It was then up to the appellants to demonstrate by evidence that they were not so authorized."

8. Guided by the above, I find that where a complaint is raised regarding a deponent's authority, the burden lies on the disputing party to demonstrate, by evidence, that the deponent lacked the requisite authority. A bare assertion is insufficient to discharge this burden. In the present case, the Respondent has not provided such evidence.

Consequently, the objection fails, and the Supporting Affidavit is deemed properly on record.

9. This then brings me to **Section 80** of the **Civil Procedure Act Cap 21** 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** provides:

“(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. It is trite law that for an application for review to succeed, the applicant must satisfy the Court as to the existence of any one of the above grounds. In addition, the application must be filed without unreasonable delay.
12. The Applicant seeks a review and variation of the orders issued by this Court on 10th July 2025, principally to extend the time for compliance by sixty (60) days. The reason advanced is that the timelines granted are insufficient.
13. Upon careful evaluation, I find that the Applicant has not met the threshold for review under Order 45. The Application does not allege the discovery of new evidence, nor does it point to any error apparent on the face of the record. The Applicant’s assertion of logistical difficulty does not constitute a sufficient reason for reviewing a lawfully issued order. A party’s subsequent challenge in complying with a court order is not, by itself, a ground for review. The proper course of action would have been to seek an extension of time promptly, and not to seek a review of the order itself.
14. Even if the Application were correctly presented as a request for an extension of time, the Applicant's argument remains unpersuasive.
15. The Applicant contends that the retrieval process is difficult. However, the documents in question are not obscure or ancient artifacts. They are fundamental financial and statutory records that a company is mandated by law to maintain and have readily available at its registered

office (as stipulated in Sections 628, 630, 317 and 318 of the Companies Act, 2015).

16. The Respondent rightfully questions why a company would need 60 days to produce its own essential corporate records, as it raises concerns about the company's governance and credibility. The Applicant's claim, without any detailed explanation of the specific logistical challenges, lacks credibility.
17. Regarding the Joint Inspector, the correspondence between the advocates reveals that the Respondent acted in good faith by promptly proposing two qualified and independent CPA firms. The Applicant, however, rejected both proposals, the first on the basis of prior litigation, and the second by insisting on a Tier 1 audit firm and demanding that the Respondent first develop Terms of Reference. This conduct appears dilatory and contrary to the Court's directive for the parties to agree on an inspector in a timely manner. The failure to reach an agreement rest squarely with the Applicant.
18. The overriding objective of this Court, as enshrined in Sections 1A and 1B of the Civil Procedure Act, is to facilitate the just, expeditious, and efficient resolution of disputes. The present Application, which lacks merit and appears to be a tactic to delay compliance, does not further this objective.
19. Consequently, the Notice of Motion dated 22nd July 2025 is hereby dismissed in its entirety with costs to the Respondents.

RULING delivered virtually, dated and signed at **NAIROBI**

This **30th** day of **October** 2025.

P.M. MULWA
JUDGE

In the presence of:

Ms. Obura h/b for Mr. Seko for Plaintiff/Applicant

Mr. Kimani for 2nd Defendant/Respondent

Court Assistant: *Carlos*