



REPUBLIC OF KENYA



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Rafiki Microfinance Bank Limited v Oxkat Solutions Limited (Civil Appeal E245 of 2024) [2025] KEHC 15003 (KLR) (24 October 2025) (Judgment)

Neutral citation: [2025] KEHC 15003 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E245 OF 2024**

J NGAAH, J

OCTOBER 24, 2025

BETWEEN

RAFIKI MICROFINANCE BANK LIMITED APPELLANT

AND

OXKAT SOLUTIONS LIMITED RESPONDENT

JUDGMENT

1. The memorandum of appeal dated 14 August 2024 shows that the appellant’s appeal is against a lower court’s ruling dated or delivered on 6 December 2023 in Mombasa Chief Magistrates Court Civil Case No. E1579 of 2022. According to the memorandum, the ruling is said to have dismissed an application for review, dated 19 April 2023.
2. The record shows that the application dated 19 April 2023 was a motion by the appellant seeking:
 - “2... stay execution of the order of Hon. Kiage made on 22nd November 2022 and 6th April 2023 pending the hearing and determination of this application.
 3. That the order made by Hon. Justice (sic) Kiage on 22nd November 2022 and 6th April 2023 be reviewed and set aside”The applicant in the motion also sought for an order for costs.
3. It would appear the appellant omitted from its record of appeal the plaint and, therefore, I was not able to gather what the respondent’s claim in the substantive suit was all about. I need mention that under Order 42 Rule 13(4)(b) of the Civil Procedure Rules, pleadings which, needless to say, include plaints, comprise primary documents and their omission from the record of appeal would render the appeal incompetent and fatally defective.



4. But just in case I have inadvertently missed this vital document, and turning back to the application of 19 April 2023, I note that the grounds upon which the motion was made were, inter alia, that the applicant in the motion had initially made an application to set aside orders of the court made on 22 November 2022 but the application had been declined. To quote the applicant:

“ 1. That the applicant’s advocate had made an application to set aside the first orders granted by the court 22nd November 2022 and gave valid reasons on their absence in court but the court went ahead and denied the orders sought in the said application and upheld the orders it had initially granted.”

5. It would follow from this averment that the application of 19 April 2023 was the second application targeting the orders of 22 November 2022 which, as noted, are the same orders that were impugned in the application of 19 April 2023.

6. An affidavit sworn by Ms. Kavasias, the learned counsel for the applicant in support of the application dated 19 April 2023, shows that, apparently, an application by the respondent in this appeal had been slated for hearing on 22 November 2022. However, for some reason, Ms. Kavasias was unable to log into the virtual platform in time to participate in the proceedings. She later discovered that the respondent’s application had been allowed. The record of proceedings of 22 November 2022 shows this to have been the case. The record reads as follows:

“ 22. 11.2022

Hon. G. Kiage-SRM

Abdulfatahi-Court assistant

Mr. Mokaya-plaintiff

Wamaitha Muhonja & Co defendant/respondent-no appearance

Mr. Mokaya-our notice of motion dated 8.11.22 is for hearing we pray that it be allowed.

Court - the application dated 8.11.2022 is hereby allowed in terms of prayer no. 3 on condition that the plaintiff shall not sell, dispose off (sic) or in any other way deal with the subject motor vehicle so as to defeat any just claim that the defendant may be thereon.

Hon. G. Kiage - SRM

22. 11.2022”.

7. The Court set the matter for pre-trial on 15 February 2023.

The respondent opposed the application dated 19 April 2023. A replying affidavit to this end was sworn and filed by Douglas Kithurima Mwitii. Mr. Mwitii “swore”, inter alia, that:

“ 8. That the instant application is res judicata as the Defendant/ Applicant filed a similar application on 22nd November 2022 for setting aside proceedings of 22.11.2022 and stay of execution which application was dismissed by this Honourable Court vide Ruling delivered on 15th February 2023.



9. That this Honourable Court is functus officio having already rendered itself on the Plaintiff/s (sic) Notice of Motion Application dated 8th November 2022 and further vide its Ruling on 15th February 2023.”
8. In a ruling delivered on 6 December 2023, the magistrates’ court dismissed the application and held that there was no sufficient reason to warrant the court reviewing its orders of 22 November 2022. The appellant has now appealed against this decision. The grounds upon which the appeal is made have been captured in the memorandum of appeal as follows:
- “ 1. That the court erred in dismissing the review application dated 19th April 2023 and not considering our submissions that the orders court issued by the court were unenforceable.
2. That the court erroneously issued injunctive orders despite the subject matter being non existent since the Motor vehicle had already been sold by way of a public auction before filing of the application dated 8th November 2022.
3. That the Appellant was not given an opportunity to be heard and the application to set aside the injunction orders that were unenforceable was dismissed without consideration of the evidence presented by the appellant and was bought by one Daniel Gitau Mbage at Kenya Shillings Three Million and One Hundred Thousand Only (Kshs.3,100,00/=).
5. That Honourable Kiage erred by dismissing our application to set aside the orders that he had issued since they were unenforceable.”
9. Based on these grounds, the appellant has sought that the orders issued on 22 November 2022 by Honourable Kiage be set aside or varied and that the application dated 8 November 2022 be heard on merit.
10. As earlier noted, prior to the application of 19 April 2023, the appellant had filed another application dated 22 November 2022. In that application, expressed to be brought under order 22 rule 52 of the Civil Procedure Rules, the applicant had sought for orders framed as follows:
- “ 1. That this Honorable Court be pleased to grant a stay of execution against orders issued on the 11 November 2022 pending the hearing and determination of this application.
2. That this court be pleased to set aside the proceedings and orders issued on the 22nd November 2022.”
- The only other prayer was for an order on costs.
11. The grounds upon which the application was made were more or less the same grounds upon which the application of 19 April 2023 was made. These grounds were expressed on the face of the application to be that the appellant was bound to suffer prejudice if it was not given a chance to be heard. In particular, the court had ordered the release of the subject motor-vehicle yet it was the appellant’s security for the loan granted to the respondent. The grounds also comprised reasons why its counsel could not attend court on 22 November 2022.
12. The court (Honourable Kiage) considered the application and, in a ruling, dated 4 April 2023, dismissed the application.



13. The applicant did not cite in its application of 19 April 2023 the provisions of the law upon which the application was made. I reckon that to the extent that the applicant sought review of the orders made on 22 November 2025, the learned magistrate proceeded on the assumption that the appropriate provision that ought to have been invoked was section 80 of the *Civil Procedure Act*, cap. 21 and order 45 of the Civil Procedure Rules which provide for review and the procedure for application for the order. Section 80 of the *Civil Procedure Act* reads as follows:

80. Review

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.

14. This provision is replicated almost in the same terms in Order 45 rule 1 of the Civil Procedure Rules which reads as follows:

45.

1 (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.
- (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.

15. Thus, all an applicant for an order for review of an order or decree is enjoined to demonstrate is, a discovery of new important matter or evidence, subsequent to the grant of the decree or order sought to be reviewed; or, a mistake or an error apparent on the face of the record; or any other sufficient reason.

16. Before considering whether the applicant demonstrated any of these conditions, a preliminary question in an application for review which the court is bound to consider first is whether the application was filed without unreasonable delay. This is because it is imperative that an application for review be filed at the earliest opportunity possible.

17. In the appellant's case, the impugned order was made on 22 November 2022 but it was not until 19 April 2023 that the application for review was filed. A delay of five months or so was, in the



circumstances of the appellant's case, inordinate and, at the very least, called for some explanation. But no attempt was made to explain the delay. The inordinate and unexplained delay were a sufficient reason to dismiss the applicant's application.

18. In her ruling, the learned magistrate considered the applicable law which, as noted, is section 80 of the *Civil procedure Act* and Order 44 rule 1 of the Civil Procedure Rules and also cited the decision in Republic versus Public Procurement Administrative Review Board & 2 Others (2018) eKLR on the grounds for review.
19. The learned magistrate then came to the decision that the appellant had not given any sufficient reason for the review of the order of 22 November 2025. She also held that the appellant had not demonstrated any of the grounds for review and aptly noted that the order for review is discretionary. To quote the learned magistrate:

“The reasons fronted by counsel for the defendant/ applicant do not fall within the grounds stated under Section 80 of the *Civil Procedure Act*. It is also important to note that the power to review orders is discretionary, a power that ought to be exercised judiciously...I have said enough to demonstrate that the applicant's application is destined to fail on account of the fact that no sufficient cause has been demonstrated to show why the application should be allowed.”
20. I find the decision of the learned magistrate to have been consistent with order 45 rule 3 (1) of the Civil procedure Rules according to which the court is entitled to dismiss an application for review if, in its opinion, there is no sufficient ground for review. This rule reads as follows:
 - (1) Where it appears to the court that there is not sufficient ground for a review, it shall dismiss the application.
21. The application of 19 April 2023 appears also to have been made in blatant abuse of the process of the court for the reason that the appellant had made an application on similar grounds seeking, among other things, to set aside the same orders for which it sought review in the subsequent application. It is worth noting that the application of 19 April 2023 was only made after the dismissal of the application of 22 November 2022 which, for all intents and purposes, sought to achieve the same result as the application dated 19 April 2023. As a matter of fact, a casual look at the grounds of appeal reveal that the appeal is targeted more at the orders made on 22 November 2022 than at the ruling of 6 December 2023.
22. In the final analysis, I find no merit in the appellant's appeal. It is hereby dismissed with costs.

SIGNED, DATED AND DELIVERED ON 24 OCTOBER 2025

NGAAH JAIRUS

JUDGE

