



Wainaina t/a City Eye Advertising Agency v Shop and Deliver Limited t/a Betika (Civil Case E020 of 2025) [2025] KEHC 14876 (KLR) (Commercial and Tax) (16 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14876 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E020 OF 2025
F GIKONYO, J
OCTOBER 16, 2025**

BETWEEN

**ZAKAYO MUCHAI WAINAINA T/A CITY EYE ADVERTISING
AGENCY APPLICANT**

AND

SHOP AND DELIVER LIMITED T/A BETIKA RESPONDENT

RULING

1. The applicant filed the notice of motion dated 24th March 2025 under Order 45 Rule 1 of Civil Procedure Rules, seeking a review of the ruling dated 13th March 2025 and a reinstatement of the application dated 10th January 2025 for determination on merits.
2. The application is premised on the grounds laid out on its face and the supporting affidavit sworn by the plaintiff on 13th March 2025.
3. The grounds are that: -
 1. There was an error on the face of record.
 2. That the court inadvertently failed to notice that there is a plaint filed contemporaneously with the application of 10th January 2025, hence the suit was not originated by way of motion but through a plaint.
 3. That the application has been brought without undue delay.
 4. That no prejudice will be occasioned upon either party if the orders sought are granted.
4. The applicant noted from reading the ruling of 13th March 2025 that the court had not noticed that the court did not realize that the suit was originated vide the plaint. He indicated that he had



failed to paginate the voluminous booklet that he filed containing the application and all the pleadings including the plaint.

5. The applicant asserted that unless the orders are granted, he would suffer irreparable loss and damage as the respondent is still using his trademark and has persisted in doing so to his detriment.
6. There was no response filed despite service.

Analysis and Determination

7. Is there ground to review the ruling of 13th March 2025?
8. Review is a discretionary remedy provided in section 80 of the *Civil Procedure Act*. The discretion is exercised on principles encapsulated in grounds set out under Order 45 Rule 1 of the Civil Procedure Rules, being, discovery of new and important matter or evidence or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason.
9. The instant application is based on an error apparent on the face of the record.
10. In *National Bank of Kenya Ltd v Ndungu Njau* [1997] eKLR, the Court of Appeal stated as follows: -

“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.”
11. According to the applicant, the error apparent is that the court did not realize that the suit was originated via plaint.
12. Is there an error apparent on the face of the record in the circumstances?
13. In the ruling of 13th March 2025, the court observed that the applicant had commenced the proceedings by way of notice of motion. Making it extremely difficult to entertain an interlocutory application yet disposing the entire suit which is raising fundamental question of infringement of intellectual property rights from both parties.
14. The plaintiff exhibited a copy of the plaint dated 10th January 2025 and a copy of the filing receipt, marked as ZMW 1(a) and (b). The plaint is at pages 79 to 85 of the booklet.
15. The plaintiff also exhibited a copy of the filing receipt for the application of 10th January 2025.
16. Examination of the documents filed persuades me that there is an error on the face of the record. I find that the applicant has met the threshold for the grant of a review.
17. However, I do note that the plaint was filed as an exhibit and not a stand alone pleading. I also note that the receipt exhibited is for a non-liquidated claim or originating summons.
18. From a reading of the plaint, the claim is liquidated as, the applicant seeks, inter alia, payment of Kshs. 1,000,000/- payout for the Majic Numbers Game and payment of Kshs. 99,979,365.61 winnings.
19. Therefore, before the application of 10th January 2025 is readmitted for determination, the applicant ought to re-submit the plaint for assessment of the correct filing fees and it be filed as a standalone pleading.

Disposal

20. In the upshot,



1. The application dated 24th March 2025 is allowed in the following terms: -
2. The applicant to re-submit the plaint for assessment and payment of the appropriate filing fees for its liquidated claim and it be filed as a standalone pleading, within 14 days from the date of this ruling.
3. The application of 10th January 2025 will be re-admitted to hearing upon the applicant's compliance with (2) above.
4. No orders as to costs as there was no response.

**DATED, SIGNED AND DELIVERED THROUGH MICROSOFT TEAMS ONLINE
APPLICATION THIS 16TH DAY OF OCTOBER, 2025**

F. GIKONYO M

JUDGE

In the presence of:

Muchai for Applicant

Ms. Gakure for Wairoto for Respondent

CA Kinyua

