

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL AND TAX DIVISION
HCCOMM NO. E593 OF 2023

BETWEEN

**ROTHSCHILD INVESTMENT
LIMITED.....APPLICANT**

VERSUS

**ERIC KABURU
ADVOCATES.....DEFENDANT**

AND

KIRUGI LAIBON M'MUKINDIA.....1ST

INTERESTED PARTY

TOTAL ENERGIES LIMITED.....2ND

INTERESTED PARTY

RULING

1. By a ruling delivered by this Honourable Court on 4th December 2024, the Court dismissed the Plaintiff's application on 1st March 2024 and directed the Defendant to deposit in Court the full amount of Kshs.47,196,000/= the subject of the dispute herein. This precipitated the filing of

the present application by the Defendant dated 16th May 2025.

2. In the said application the Defendant urges this Honourable Court to review its order of 4th December 2024 directing the payment into Court of the full sum of Kshs.47,196,000/= in Court and alleges that there is an error apparent on the face of the record.

3. Order 45 Rule 1 of the Civil Procedure Rules has set the grounds upon which such review can be conducted. Order 45 provides as follows: - ***“1. Application for review of decree or order [Order 45, rule 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.”

4. The above provisions have been elucidated by the Courts in various Court decisions. In the case of **Republic v Cabinet Secretary for Interior and coordination of Government ex parte Abdulahi Said Said (2019) eKLR** cited by the Plaintiff, the Court stated; -

“a clear reading of the above section 80 gives the power of review while order 45 sets out the rules. The rules restrict the grounds for review. They lay down the jurisdiction and scope of review. They limit review to the following grounds; -

a) Discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the Applicant or could not be produced by him at the time the decree was passed or the order made or;

b) On account of some mistake or error apparent on the face of the record,”

(c) for any other sufficient reason, desires to obtain a review of the decree or order,

5. I have carefully considered the application by the Defendant and the response filed by the 1st Interested Party. I note that in line with Order 45 of the Civil Procedure Rules, the Court has very limited and narrow scope upon which it can review its own decision. The Court must be persuaded by the Applicant that there is error apparent on the face of the record or there is discovery new and important material or evidence that was not available to the party at the time the ruling being sought to be reviewed was made. The said Order 45 has however expanded the grounds for a which a review can be granted to include **any other sufficient reason, desires to obtain a review of the decree or order,**

6. I have looked at the record and the arguments put forward by the Defendant that the ruling is erroneous in that it has failed to take into account funds that were allegedly disbursed in making its order that the full sum of Kshs.47,196,000/= in Court. Indeed, at paragraph 24 and 25 the Court did set out the arguments put forward by the

Defendant during its opposition to the said application. However, a reading of Courts findings that are to be found at paragraph 26 of the said ruling, the Court observed that it was not possible to confirm if any disbursements had been made. The said paragraph reads as follows;- *“26. As it stands, it is unascertainable how much is owed to which party. It is therefore the Court’s view, in exercise of its discretion and in the interest of justice that the whole sum of Kshs. 47,190,00/= be deposited in Court, pending the hearing and determination of the suit following which, each party’s stake in the suit shall be ascertained.”*

7. I have carefully relooked at the said ruling and I find that there is no error apparent on the face of the record to warrant this Court review the same. What the Applicant is inviting the Court to do is sit on appeal on its own decision, which the law does not allow. I find therefore the said ruling is clear and unambiguous. If the Applicant is dissatisfied with a decision of the Court, the right procedure would be to move the Court of Appeal to set aside the orders of this court and not to file an appeal disguised as an application for review. Let the Applicant proceed to comply with the orders of the Court forthwith.

8. In sum, the application dated 13th January, 2025 is without merit. The same is dismissed with costs being awarded to the Respondents (Plaintiff and Interested parties) to be borne by the Defendant. It is so ordered.

**DATED SIGNED and DELIVERED virtually at NAIROBI this 7TH
DAY of NOVEMBER 2025**

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J.W.W. MONGARE
JUDGE

IN THE PRESENCE OF:-

1. Mr. Ng'ang'a holding brief for Mr. Kariuki for the 1st Interested Party/Applicant.
2. N/A for the Plaintiff.
3. N/A for the Respondent.
4. Amos - Court Assistant