

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
[MILIMANI LAW COURTS]
THE CIVIL APPELLATE DIVISION
(Coram: A.C. Mrima, J.)
MISC APP. NO. E006 OF 2025

-between-

BORABU INVESTMENTS LIMITED.....
APPLICANT

-Versus-

VICTOR OTIENO.....RESPONDENT

RULING

1. The application subject of this ruling is the Notice of Motion dated 18th July 2025. The application is supported by the grounds on the face of it and the Supporting Affidavit of *Dr. Akama Mathew*, the Director of the Applicant, sworn on even date. The application seeks the following orders: -
 1. *Spent.*
 2. *THAT the Court be pleased to re-open the file for reconsideration in the wider interest of justice.*
 3. *THAT pending the hearing and determination of this application, the Honourable Court be pleased to extend and/nor vary the orders issued on 5th June 2025 to allow the Applicant to deposit a sum of Ksh. 500,000/= with the Respondent's Advocate on record, in lieu of depositing one half of the decretal sum in court.*
 4. *THAT there be stay of proceedings in CIVIL CASE NO. E4717 OF 2022 pending the hearing and determination of the Application herein.*
2. According to the Applicant, depositing of the sum of Kshs. 500,000/= with the Respondent's Advocates is a show of good faith as te Applicant endeavours to pursue additional funding as to satisfy the entire decree. A copy of the order made on 5th June 2025 was annexed to the application.

3. The Respondent vehemently opposed the application through a Replying Affidavit sworn 22nd July 2025. He emphasized that the Applicant was undeserving of any other orders since it had failed to comply with the orders of this Court dated 5th June 2025.
4. The application was canvassed by way of written submissions. The Applicant's submissions were dated 16th August 2025 while the Respondent's submissions were dated 29th August 2025. The said submissions have been carefully considered by this Court.
5. Having carefully considered the application, the response, the parties' written submissions as well as the decisions referred to therein, the only issue for determination is whether the application is merited.
6. In settling the issue, suffice to have a look at the orders made on 5th June 2025 in the absence of the Applicant's Counsel. The principal order is hereby reproduced under: -
 1. *The Notice of Motion dated 24th April 2025 which was marked as withdrawn is hereby reinstated and allowed on condition that the Applicant shall file the appeal within 7 days and **shall also pay one half of the decretal sum to the Respondent's Counsel within 30 days of service of this order** and the balance of one-half of the decretal sum do await the outcome of the Appeal. In default, execution to issue.*
7. For avoidance of doubt, the Notice of Motion dated 24th April 2025 sought stay of execution and leave to file the appeal out of time.
8. From the record, the decretal sum in the primary suit stands at almost Kshs. 10,000,000/=. Therefore, one-half thereof would translate to around Kshs. 5,000,000/=. It is that sum which the Applicant seeks to be reviewed and replaced with the sum of Kshs. 500,000/=. The reason tendered by the Applicant in support of the review is that the Applicant is pursuing additional funding to settle the entire decretal sum. The Applicant did not express any inability to comply with the orders made on 5th June 2025. As said, it only stated that it was intent on settling the

entire judgment sum. To this Court, since the Applicant has failed to give reasons for the review of the orders, the application cannot succeed. It is for rejection.

9. The upshot is, therefore, that this Court hereby makes the following final orders: -

[a] The Notice of Motion dated 18th July 2025 is hereby dismissed.

[b] The Applicant shall bear the costs of the application hereby assessed at Kshs. 20,000/= [Kenya Shillings Twenty Thousand Only]. The said sum shall be paid within 30 days and in default execution to issue.

Orders accordingly.

DELIVERED, DATED and SIGNED at NAIROBI this 19th day of November, 2025.

A. C. MRIMA

JUDGE

Ruling virtually delivered in the presence of:

Mr. Kegode, Learned Counsel for the Applicant.

Mr. Ochieng, Learned Counsel for the Respondent.

Michael/Amina - Court Assistants.