

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT THIKA**

**ELCLA NO. ELCLA E008 OF 2025**

**PAUL MWANGI MACHARIA ..... 1ST APPELLANT/APPLICANT  
FRESHIA WANJIKU MUIBU ..... 2ND APPELLANT  
/APPLICANT**

**VERSUS**

**TASHA ENTERPRISES (K) LIMITED ..... 1ST  
RESPONDENT  
ANFIELD AUCTIONEERS ..... 2ND  
RESPONDENT**

**RULING**

1. What is before me for determination is the Applicant's Notice of Motion dated 25<sup>th</sup> July 2025 seeking review or variation of the orders issued on 9<sup>th</sup> July 2025 requiring the Applicant to deposit the sum of Kshs. 3 million as security for costs as a condition for stay of execution pending appeal.
2. The application is premised on the grounds that the Applicant is unable to raise the sum of Kshs. 3 million and he is instead offering an alternative security in the form of a title deed for a parcel of land valued at Kshs. 4million.
3. The application was met with strong resistance by the Respondent through its Replying Affidavit.

4. Pursuant to the court's directions, the parties filed their written submissions to canvass the application.

### **ANALYSIS AND DETERMINATION**

5. I have carefully considered the Notice of Motion, rival affidavits, submissions and the applicable law and the only issue for determination is whether the application should be allowed.
6. Section 80 of the Civil Procedure Act Cap 21 Laws of Kenya states:

***“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.”***

7. Order 45 Rule 1 of the Civil Procedure Rules, provides as follows:

***“(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.”***

8. The question I must ask myself is whether the reasons given by the Application fall within the parameters for review provided by section 80 of the Civil Procedure Act and order 45 of the Civil Procedure Rules.
9. In order to rely on these grounds, it must be demonstrated that they analogous to the other two grounds being either that there is an error apparent on the face of the record, or there is discovery of a new and important matter.

10. This was stated in the case of **Republic v Advocate Disciplinary Tribunal Ex- parte Appollo Mboya ( 2019) KEHC 6379** where the court held as follows:

*“In the case of **Sadar Mohamed v Charan Singh & Another (1963) EA 557** it was held that any other sufficient reason for the purpose of review refers to grounds analogous to the other two; (for example error on the face of the record and discovery of a new matter. Mulla in the Code of Civil procedure ( writing on Order 47 Rule 1 of the Civil Procedure Code of India ( the equivalent of Order 45 Rule 1 states that the expression “ any other sufficient cause means a reason sufficiently analogous to those specified in the rule. Any attempt except an attempt to correct an apparent error or an attempt not based on any ground set out would amount to an abuse of the liberty given to the tribunal under the Act to review its judgment.”*

11. There is no suggestion that there is a new an important matter nor is there any averment that there is an error apparent on the face of the record. The only ground that the Applicant seems to be relying on is that there is sufficient cause to review the orders of this court as he has explained that he is unable to meet the terms of the stay. This neither demonstrates that there is an error apparent on the face of the record, nor does it demonstrate that there is discovery of a new and important matter.
12. What is apparent is that the Applicant wants the court to reconsider its position based on the Applicant’s inability to comply with the orders issued by the court. This would entail a merit-based reassessment of the application. Having rendered its decision, the

court is *functus officio* and is barred from revisiting its decision as this would amount to sitting on appeal on its own decision.

13. Consequently, the application lacks merit and the same is dismissed with costs to the Respondent.

**Dated, signed and delivered virtually, this 9<sup>th</sup> day of December 2025.**

.....  
**J. M ONYANGO**  
**JUDGE**

**In the presence of:**

1. Miss Kirui for Mr. Kiroko Ndegwa for the Appellant/ Applicant
2. Miss Owuor for the Respondent

Court Assistant: Hinga