



**Ndenderu v Equity Bank Kenya Limited & another (Commercial Suit E001 of 2025) [2025] KEHC 18348 (KLR) (11 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18348 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
COMMERCIAL SUIT E001 OF 2025  
BM MUSYOKI, J  
DECEMBER 11, 2025**

**BETWEEN**

**IRENE MUTHONI NDENDERU ..... PLAINTIFF**

**AND**

**EQUITY BANK KENYA LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**GRACE GATHONI MANIA T/A SUNLIGHT AUCTIONEERS .... 2<sup>ND</sup>  
DEFENDANT**

**RULING**

1. This ruling is in respect of plaintiff's notice of motion fated 17<sup>th</sup> April 2025 which seeks the following orders.
  1. That the Honourable Court be pleased to review and set aside the order issued on 8<sup>th</sup> April 2025 directing the 1<sup>st</sup> Respondent to deposit the sum of Kshs 16,500,000/= in court.
  2. That the costs of this application be provided for.
  3. Spent.
  4. That this Honourable court be pleased to grant such other or further orders as it may deem fit in the interest of justice.
2. The plaintiff had instituted this suit against the defendants claiming Kshs 24,343,400.00, general damages for breach of contract and loss of profits, interest and costs. When the matter was at the pre-trial stage, the parties appeared before Honourable Lady Justice F. Muchemi on 26-02-2025 when they informed the court that they were pursuing an out of court settlement. In addition, the counsel for the defendants proposed that Kshs 16,500,000.00 being the principal sum received from the plaintiff be deposited with the plaintiff or the court. This is the sum which the plaintiff paid for the failed transaction which formed the basis for claim. The defendant's counsel told the court that the other



claim was disputed and stated that it could be pursued in the hearing of the case. The advocate for the plaintiff agreed to have the money deposited in their clients' account.

3. As it would turn out, the money was not deposited as agreed as the advocate for the plaintiff had failed to provide their bank account details. On 8-04-2025, the plaintiff's advocate asked the court to give directions as she did not have further instructions. Based on these representations, the court gave the following orders;

The defendant's counsel says they are still willing to release part of the amount claimed being Kshs 16,500,000.00 and are ready to have it deposited in court. The plaintiff's counsel says all they want is to set aside the consent and have the matter go for hearing. Both parties seem agreeable to setting aside the consent.

Orders;

1. The Kshs 16,500,000.00 to be deposited in court within 30 days pending the disposal of this case.
  2. The consent dated 26-02-2025 is hereby set aside by consent of the parties.
  3. The defendant to comply with Order 11 within 30 days.
  4. Mention on 11-06-2025.'
4. It is the above order which the plaintiff is seeking to set aside on grounds that the consent order dated 26-02-2025 which was the basis for the orders of 8-04-2025 having been set aside, the order for deposit has no legal foundation and the applicant is likely to suffer injustice if she is forced to comply with the voided consent order.
  5. The defendants filed a replying affidavit sworn by Samuel Wamaitha on 29<sup>th</sup> April 2025 which gives the history of the transaction culminating to this suit and what transpired in court on the two days. The deponent avers that there is no evidence of fraud, coercion or misrepresentation surrounding the recording of the consent.
  6. I have tried to understand the plaintiff's argument in vain. The orders of 8-04-2025 were not by consent. From the way the orders were couched, the only element of consent was the part setting aside the consent of 26-02-2025. In my understanding, the order of 8-04-2025 did not have its basis or foundation on the consent dated 26-04-2025 other than having the latter set aside. The court expressed its position following the representation of the defendant that they were willing to deposit the uncontested sum in court. This to me, borders on admission of part of the claim which is recognisable and acceptable in law.
  7. The plaintiff has submitted that subsistence of the orders of 8-04-2025 will compromise her suit since she suffered more damages than the said amount. How the orders will compromise the rest of the claim remains a mirage to me. It is my first time to see a plaintiff declining to accept or opposing what amounts to an admission of part their claim. I am sure that were it in a different suit, the plaintiff with proper legal guidance would rush to secure judgement on admission for the undisputed sum. Be that as it may, the plaintiff has approached the court for reliefs she believes in and as this court has a public duty to render a ruling on issues raised by the parties, I will proceed to do exactly that.
  8. The grounds for review are set out in Order 45 Rule 1 of the Civil Procedure Rules and Section 80 of the *Civil Procedure Act*. There must be new and important evidence which the applicant could not with due diligence have obtained during the hearing or proceedings which culminated to the decision sought to be reviewed or a mistake apparent on the face of the record or any other sufficient reason.



Going by her submissions, the plaintiff has based her application on the ground that there are other sufficient reasons and that there was a mistake apparent on the face of the record.

9. Sufficient reasons have in the context of an application for review been defined to be reasons that are similar or comparable to the other two conditions specified in Order 45 Rule 1 of the Civil Procedure Rules. In *Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya* (2019) KEHC 6379 (KLR), it was held that;

A court can review a judgment for any other sufficient reason. In the case of *Sadar Mohamed vs Charan Singh and Another*<sup>[16]</sup> it was held that any other sufficient reason for the purposes of review refers to grounds analogous to the other two (for example error on the face of the record and discovery of new matter. Mulla in the Code of Civil Procedure<sup>[17]</sup> (writing on Order 47 Rule 1 of the Civil Procedure Code of India), (the equivalent of our Order 45 Rule 1), states that the expression 'any other sufficient reason'...means a reason sufficiently analogous to those specified in the rule. Any other 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 judgement.'

10. The defendants have submitted that consent orders can only be set aside on the same reasons as those that would set aside a contract. In my assessment, the orders of 8-04-2025 were not consent orders. Consent orders were for 26-02-2025 and were set aside by consent on 8-04-2025. The limb of the orders of 8-04-2025 which are being sought to be reviewed came from the court upon consideration of the request by the defendants. The submissions by the parties which purport to depict the order for depositing of Kshs 16,500,000.00 as consent orders are therefore respectfully out of the mark.
11. As I have pointed above, it is strange that the plaintiff is resisting court's orders which are not only in her favour but also in my view meant to reduce issues for determination. A court is entitled to identify and isolate uncontested facts during pre-trials which in my view is promotion of alternative dispute resolution mechanism and expeditious disposal of cases pursuant to Articles 159(2)(b) and (c) of the Constitution. The effect of the Honourable Judge's order is to have the issue surrounding the payment of Kshs 16,500,000.00 removed from the list of what the court will have to deal with during the trial and writing of the final judgment.
12. The plaintiff argues that the order is prejudicial to her because it may compromise the other part of her claim. This is a misguided approach to this matter. The court has powers to ringfence issues which are not contested. The Kshs 16,500,000.00 is pleaded in paragraph 22 of the plaint as one of the items comprising the claim for Kshs 24,343,400.00. The other items are; cost of drilling and establishing borehole at Kshs 4,501,400.00, cost of construction of perimeter wall at Kshs 2,842,000.00 and costs of legal services at Kshs 500,000.00. I do not see how proof of these items is dependent on the deposit or lack of it of the Kshs 16,500,000.00.
13. In the final, analysis, I see no merits in this application and the same is hereby dismissed with costs to the defendants.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11<sup>TH</sup> DAY OF DECEMBER 2025.**

**B.M. MUSYOKI**

**JUDGE OF THE HIGH COURT.**

Ruling delivered in presence of Miss Kaburu holding brief for Mr. Karoti for the plaintiff and Miss Wamuyu for the defendants.

