

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION
HCCOMMA NO. E136 OF 2024

JOSEPH GIKONYO T/A GARAM INVESTMENTS.....
APPELLANT/APPLICANT

-VERSUS-

FATMA ALI DABASO..... 1ST

RESPONDENT

FIRST COMMUNITY BANK LIMITED.....2ND RESPONDENT

RULING

Introduction & Background

1. This Ruling determines the Notice of Motion dated 14th February 2025 brought by Joseph Gikonyo T/A Garam Investments (the Applicant), seeking a review of this Court's judgment delivered on 22nd January 2025, which dismissed his appeal against the taxing master's ruling of 18th April 2024 on the Auctioneer's Bill of Costs.
2. The application is brought under **Section 80 of the Civil Procedure Act** and **Order 45 Rule 1 of the Civil Procedure Rules**, and is based on the fact that there exists an **error apparent on the face of the record**, particularly in the Court's treatment of the basis upon which auctioneer's commission is chargeable where a forced sale does not culminate in a sale.

3. The Applicant contended that the Court erred in stating that reliance on forced sale value was flawed because the auction did not proceed, and no funds were realized. This finding, according to the Applicant, allegedly conflicts with Section 97(2) of the **Land Act 2012**, which mandates property valuation before sale, inherently linking forced sale value to the process.
4. The Court Applicant further argued that the Court erred by affirming a double reduction of the Auctioneer's commission despite the fact that Item 5 of the Bill of Costs was already charged at half rate per Paragraph 7 of the **Auctioneers Rules 1997**, and that the further reduction by the taxing master was erroneous.
5. The Applicant asserted that the Judgment of this Court of 22 January 2025 contained a self-evident error, particularly concerning the interpretation of the auctioneer's entitlement to fees and the applicable principles governing attachment and taxation under the **Auctioneers Rules**, as clarified by authoritative jurisprudence such as **National Industrial Credit Bank Limited v S. K. Ndegwa Auctioneer [2005] eKLR**.
6. The 2nd Respondent opposed the application through Grounds of Opposition dated 25th April 2025, arguing primarily that the application does not meet the threshold for review under Order 45 Rule 1 of the Civil Procedure Rules, as it invites a reappraisal of evidence and re-litigation of issues already determined.
7. According to the 2nd Respondent, an error apparent on the face of the record must be self-evident and not require elaborate argument. The Respondent submits that the Applicant's

dissatisfaction with the Court's legal interpretation is a matter for appeal, not review.

8. The Application was canvassed by way of written submissions. The Applicant's submissions are dated 30 May 2025, whilst the 2nd Respondent's submissions are dated 27 June 2025.

Analysis and Determination

9. From the pleadings and rival positions, the sole issue that arises for determination is whether there is an error apparent on the face of the record or sufficient reason to justify a review of the judgment dated 22 January 2025.
10. The jurisdiction of this Court to review its own decisions is circumscribed by **Section 80 of the Civil Procedure Act** and **Order 45 Rule 1 of the Civil Procedure Rules**. Review may only be granted on the following limited grounds: discovery of new and important matter or evidence; mistake or error apparent on the face of the record; or any other sufficient reason.
11. It is now trite law that an **error apparent on the face of the record** must be self-evident, obvious, and not one that requires extensive argument or re-interpretation of law.
12. In **Nyamogo & Nyamogo Advocates v Kogo [2001] EA 173**, the Court held that:

“An error apparent on the face of the record cannot be defined precisely... but it must be an error which is self-evident and does not require an elaborate argument to be established.”

13. Similarly, in **National Bank of Kenya Ltd v Ndungu Njau [1997] eKLR**, the Court of Appeal authoritatively stated that:

“Misconstruing a statute or other provision of law cannot be a ground for review. That is a matter for appeal.”

14. The above principles were reaffirmed in **Republic v Advocates Disciplinary Tribunal ex parte Apollo Mboya [2019] eKLR**, where the Court cautioned that review jurisdiction cannot be used to sit on appeal over one’s own judgment.

15. In the present case, the gravamen of the Applicant’s complaint is that this Court allegedly erred in affirming the Taxing Officer’s reliance on the **forced sale value** as the basis for assessing the Auctioneer’s commission, notwithstanding that the sale did not proceed.

16. A reading of the impugned judgment, however, demonstrates that this Court expressly considered: the provisions of **Paragraph 7 of Part II of the Fourth Schedule to the Auctioneers Rules, 1997**; the relevance of **Section 97(2) of the Land Act, 2012**; and the jurisprudence in **National Industrial Credit Bank Ltd v S.K. Ndegwa (CA)** on when auctioneer’s fees accrue and the basis of valuation.

17. It is clear from the impugned judgment that the Court, after considering the parties’ arguments, upheld the Registrar’s discretion. Whether the Registrar correctly applied Paragraph 7 is again a matter of legal reasoning. It is not a self-evident error but one that requires a detailed argument. As held in **Francis Origo**

& Another v Jacob Kumali Mungala [2005] eKLR, an error that must be established by long-drawn reasoning cannot be said to be apparent on the face of the record.

18. The Applicant's contention that the Court misapplied the Land Act or failed to follow **National Industrial Credit Bank v S.K. Ndegwa** is a challenge to the Court's reasoning. Dissatisfaction with judicial reasoning is a matter for an appellate court and does not qualify as an error apparent on the face of the record.
19. Further, on the issue of the "double reduction," the Applicant argues the commission was already halved before the taxing master further reduced it. A perusal of the Court's judgment, however, reveals that the Court reached the following conclusion on the issue:

"Paragraph 7 of Part II of the Fourth Schedule of the Auctioneer Rules, 1997, indeed entitles an auctioneer to half the commission they would have earned had the sale been completed. However, the court's role is to assess whether the amount claimed reflects actual work done within the scope of the instructions...."

*The Appellant's claim under Item 5 of the Bill of Costs was based on the property's forced sale value of Kshs. 3,200,000. The Appellant computed commission at 10%, 5%, and 2% for various tranches of the property's value as prescribed under **Paragraph 6 of Part II of the Fourth Schedule**, which applies where a sale is successfully concluded. While **Paragraph 7** modifies this by allowing half the commission for stayed or postponed sales, **the***

Appellant failed to provide sufficient evidence to show that their computation was already halved or that the claimed amount reasonably corresponded to the actual work performed. [emphasis added].

20. From the foregoing, it is plain that what the Applicant, by this application, now seeks is for this Court to re-evaluate its interpretation of statutory provisions and binding precedent, and to substitute its conclusion with one more favourable to the Applicant. That exercise squarely falls within the domain of an appeal, not review.
21. A review under Section 80 of the Civil Procedure Act, as expounded under Order 45 of the Civil Procedure Rules 2010, is not a forum to re-litigate issues already settled. Allowing a party to re-argue their case because they disagree with the outcome would contravene the principle of finality in litigation.
22. Whether the Court correctly interpreted Section 97(2) of the Land Act, or whether it properly applied the principles in *Ndegwa*, are **debatable questions of law**, which by their very nature are incapable of constituting an error apparent on the face of the record.
23. Based on the foregoing analysis, the Court finds that the Applicant has failed to demonstrate a self-evident error that does not require elaborate argument to establish. The grounds raised by the Applicant are essentially an appeal disguised as a review.
24. Consequently, the Notice of Motion dated 14th February 2025 is hereby dismissed.

25. The costs of this application are awarded to the 2nd Respondent.

26. It is so ordered.

SIGNED, DATED, and DELIVERED IN VIRTUAL COURT THIS

29TH JANUARY 2026



**ADO MOSES
JUDGE**

In the presence of: -

C/A - Moses

Ms. Akech for Okulofor the Applicant

Akiso..... for the 2nd Respondent

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