

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL & TAX DIVISION**  
**COMMERCIAL SUIT NO. E112 OF 2023**

**SURGILINKS LIMITED.....DECREE  
HOLDER/RESPONDENT**

**VERSUS**

**NJIMIA PHARMACEUTICALS  
LIMITED.....JUDGMENT  
DEBTOR/APPLICANT**

**RULING**

**Introduction**

1. Before this Court is the Judgment Debtor’s Notice of Motion dated 22<sup>nd</sup> July 2025, brought under Section 80 of the Civil Procedure Act, Order 45 Rule 1, Order 22 Rule 22, Order 51 Rule 1 of the Civil Procedure Rules, and Article 159(2)(d) of the Constitution. The Applicant seeks, inter alia, orders for review, variation and/or setting aside of the judgment delivered on 10<sup>th</sup> July 2025, an order that accounts be taken, and a stay of execution of the decree.
2. The application is supported by the affidavit of Dr. Daniel Wachira and opposed through the Replying Affidavit of Mr. Paul Metho, sworn on 29<sup>th</sup> July 2025, together with written submissions filed by the Decree Holder.

3. I have carefully considered the application, the affidavits on record, the annexures thereto, and the rival submissions.

### **Background**

4. Judgment on admission for the principal sum of Kshs. 22,077,882.74 was entered on 24<sup>th</sup> August 2023, with the issue of interest left for determination. After hearing parties, the Court delivered its judgment on 10<sup>th</sup> July 2025, decreeing interest in the sum of Kshs. 21,630,641.32 as at 11<sup>th</sup> July 2024, and further directing that the outstanding sum continue to accrue interest at 3% per month.

5. The Applicant contends that it had commenced payment of instalments prior to the hearing on interest, and that such payments were allegedly concealed from the Court, thereby warranting review and taking of accounts.

### **Issues for determination**

6. The issues that arise for determination are:

- i. Whether the Applicant has met the threshold for review,*
- ii. Whether this Court should order accounts and*
- iii. Whether the Applicant is entitled to an order of stay of execution.*

### *Whether grounds for review have been established*

7. The law on review is well settled. **Section 80** of the **Civil Procedure Act** and **Order 45 Rule 1** of the Rules circumscribe the jurisdiction of the Court to review its decisions to three specific grounds:

- i. Discovery of new and important matter or evidence which, after due diligence, was not within the applicant's knowledge;*
  - ii. Mistake or error apparent on the face of the record;*  
*or*
  - iii. Any other sufficient reason.*
8. In **Bethwel Omondi Okal v Managing Director KPLC & Co [2017] KEHC 9633 (KLR)**, the Court held that the scope of review is narrow and cannot be used as a substitute for appeal. The Court stated:  

***“An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record.”***
9. Similarly, in **Evan Bwire v Andrew Nginda [2000] LLR 8340**, the Court emphasized that review will only be allowed on very strong grounds, particularly where its effect would be to reopen the case afresh.
10. In the present case, the alleged payments relied upon by the Applicant relate to a cheque deposited on 10<sup>th</sup> July 2024, which, as is evident from the record, had not been received or cleared by the Decree Holder by the date of the hearing on interest, namely 11<sup>th</sup> July 2024. The Court cannot therefore be faulted for proceeding on the factual position as it stood at the time of hearing.

11. The Applicant has not demonstrated discovery of any new evidence that was unavailable despite due diligence, nor has it shown any error apparent on the face of the record. What the Applicant invites the Court to do is to re-evaluate the merits of the judgment, which is the proper province of an appellate court.
12. I therefore find that the Applicant has failed to satisfy the statutory grounds for review.

*Whether accounts should be taken*

13. The record shows that the Decree Holder has supplied an updated Statement of Account, detailing payments received, interest accrued, and the outstanding balance. The Applicant has not placed before this Court any alternative reconciliation or demonstrated any mathematical or legal error in the computation.
14. It is trite that he who alleges must prove. In the absence of any cogent evidence challenging the statement of account, there is no basis upon which this Court can order accounts.

*Whether a stay of execution should be issued*

15. An applicant for stay of execution must satisfy the conditions under Order 42 Rule 6 of the Civil Procedure Rules, including demonstration of substantial loss, provision of security, and promptness.
16. In **Machira t/a Machira & Co. Advocates v East African Standard (No. 2) [2002] KLR 63**, the Court held:

***“It is not enough for an applicant to merely state that substantial loss will result. He must prove specific details and particulars.”***

17. The Applicant has neither demonstrated any substantial loss nor offered security for the due performance of the decree. On the contrary, the Decree Holder continues to be kept away from the fruits of a judgment entered as far back as 24<sup>th</sup> August 2023.

18. In these circumstances, I find no basis for granting an order of stay.

### **Disposition**

19. In the result, the Notice of Motion dated 22<sup>nd</sup> July 2025 is devoid of merit and is hereby dismissed in its entirety. Costs of the application are awarded to the Decree Holder.

**RULING** delivered virtually, dated and signed at **NAIROBI**

This **29<sup>th</sup>** day of **January** 2026.

**P.M. MULWA**  
**JUDGE**

### **In the presence of:**

*Ms. Sila h/b for Mr. Kotonya for DH/Respondent*

*Ms. Waliaula h/b for Ms. Nini for JD/Applicant*

Court Assistant: *Carlos*