



**Gadano General Trading Company Limited v Alcon Holdings Limited (Civil Case E167 of 2023) [2026] KEHC 1048 (KLR) (Civ) (5 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1048 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL  
CIVIL CASE E167 OF 2023**

**JN MULWA, J**

**FEBRUARY 5, 2026**

**BETWEEN**

**GADANO GENERAL TRADING COMPANY LIMITED ..... PLAINTIFF**

**AND**

**ALCON HOLDINGS LIMITED ..... DEFENDANT**

**RULING**

1. The Defendant/Applicant filed a Motion dated 18<sup>th</sup> July, 2025 seeking orders of review, variation and/or setting aside court orders issued against the Applicant on 20<sup>th</sup> June, 2024.
2. The court by its ruling on the Plaintiffs motion dated 28<sup>th</sup> September, 2023 directed and ordered the Administrator of the Estate of the Late Dander Singh Hanspal and Idevjit Singh a Co-director of the Defendant to attend court to show cause why they should not furnish security in the sum of Ksh.38,917,000/- before hearing and determination of the suit pursuant to Order 39 Rule 5(i) of the Civil Procedure Rules on a set date which they did not comply with.
3. Grounds for the motion are stated at its face and supporting affidavit of and is premised on Order 45 Rule 1 Civil Procedure Rules and Section 80 of the *Civil Procedure Act*; in the main that the impugned orders were made against parties who were not parties to the suit, nor shareholders or directors of the Defendant company.
4. Additionally, the deponent posits that the Defendant company ceased operating or trading over 35 years ago, further stating that the applicant has since discovered new and relevant material evidence and fact that the Plaintiff's the sum of Ksh.38,917,000/- is unsubstantiated and extremely exaggerated as by the quantity surveyors valuation report dated 18<sup>th</sup> July, 2025 – annexure ENN-4 and another dated 8<sup>th</sup> August, 2025 – Exhibit ENN -2, states a market value of Ksh.1,523,665.



5. For the above reasons, the Applicant seek review and setting aside of the impugned orders issued on 20<sup>th</sup> June, 2024.
6. The Respondent's case is in its Replying Affidavit by one Mohamed Ahmed Dahir – description not stated – in which he posits that filing of a Notice of Appeal dated 24<sup>th</sup> June, 2024 constitutes an appeal in terms of Rule 2 of the Court of Appeal Rules, 2022, as it is an intended appeal.
7. It is further the Respondents case that the Applicant cannot pursue the two options of an appeal a review at the same time, as the Notice of Appeal has waived its right of review of the impugned ruling, citing the Court of Appeal case of Multipurpose Co-operative Society Ltd Vs Serser & 3 Others (2023) eKLR.
8. Further, it is deponed that the application does not meet the threshold for review application in terms of Order 45 Rule 1 CPR, and Section 80 of the CPA; adding that Section 34 *Companies Act* protects a person acting in good faith with the company, as the respondent was reasonably lead to believe that the person it was dealing with Jaspira Kaur had apparent authority on its behalf, as he duly signed the lease agreement in respect of the subject of the suit; and swore affidavits to the effect that he is the administrator of the Estate of Dander Singh Hanspal among others.
9. It is further the Plaintiff's case that the Applicant is trying to use this court as an appeal court by purporting to bring up the quantity Surveyors valuations dated 8/08/2025 when the suit is pending hearing, yet the said Applicant failed to attend court to state their reasons as to why security should not be deposited before hearing of the case.
10. In the further affidavit by the advocate for the Applicant, the Applicant affirms that it has discovered new and important evidence in respect of the claim; that the suit property was charged to KCB, was on sale at all material times, and that the court erred by failing to pierce the company's veil of incorporation before issue the NTSC to the Administrators of the Estate hence procedurally intended.
11. The Applicant prays that his motion be allowed.

#### **Applicants/Defendant's Submissions**

12. The submissions dated 25<sup>th</sup> August, 2025 by the Applicants Advocates, Ibrahim Isaack & Co. Advocates are substantively amplifying its case in the supporting affidavit, with only adding case law in respect of application and interpretation of Section 80 CPA and order 45 Rule 1 CPR.
13. Cited are cases of the Court of Appeal Sarder Mohamed Vs Chavan Singh N and Singh and Another (1959) EA 793; National Bank of Kenya Vs Ndungu Njau – Civil Appeal No. 211 of 1996; Zablon Mokua Vs Salomon N Choti & 3 others (2016) eKLR; and Wangechi Kimita & Another Vs Mutahi Wakabini Civil Appeal No. 80 of 1985 (unreported) and lastly Court of Appeal decision of Rose Kaiza Vs Angelo Mpanju Kaiza 92009) KECA 422 (KLR).
14. Likewise, the Respondent's submissions by its Advocates Jamal Bake and Associates dated 29<sup>th</sup> August, 2025 are predicated upon the Replying Affidavit to the motion.

Of importance, which I have captured is the position of the person who at all material times held himself to the Applicants as duly authorized by the Respondent, citing the case of Total Kenya Ltd Vs D. Pasacon General Construction and Electrical Services (2022) KECA 593 KLR, Multipurpose Co-operative Society (Supra); University of Eldoret and Another Vs Sitieni & 3 Others (2020) eKLR, Otieno Ragoti & Co. Advocates Vs National Bank of Kenya Ltd (2020) eKLR all for the proposition and holding that once a party files a Notice of appeal, it is deemed to have instituted an appeal, and that



- if that happens, it is not open to the party to seek review from which the appeal or intended appeal arises from.
15. The Respondent further submits that the delay of over one year to file the motion before the court is tantamount to inordinate delay, an afterthought and frustration of lawful court orders and further that the Applicant has not addressed or explained the said delay – citing the Multipurpose Co-operative Case (supra).
  16. On the NTSC against the Administrators of the Estate of the former directors, it is submitted that although they are not shareholders, they acted on behalf of the Company by executing the lease agreement over the suit property thus effectively functioned as the authorized agents of the Respondent – citing the case of Total Kenya Limited (supra) for the proposition, that a person who reasonably appears to have authority to act for another regardless of whether actual authority has been conferred, is held as the ostensible agent.
  17. It is further submitted that citing the case of Samuel Mureithi Murioki & another Vs Kamahuha Ltd (2018) KESA 38 (KLR), that once a director of a company executes a loan agreement of a document on behalf of the company, the company cannot wriggle away from its obligations by stating that the transaction was not authorized.
  18. The Respondent therefore concludes by submitting that the Notice to Show Cause orders directed to the Administrators of the Estates of the former directors were valid, and the court ought to uphold its orders issued on 3<sup>rd</sup> July, 2024; and proceed to dismiss the application for lack of merit.

### **Analysis and Disposition**

19. From the above parties cases, the court flags one issue for determination:-
  - a. Whether the Defendants/Applicants application meets the threshold for review variation or setting aside of court orders under provisions of Order 45 of the Civil Procedure Rules.
  - b. Who bears costs of the application.
20. The genesis of the Applicants motion is the Plaintiffs application dated 28/09/2023 wherein the plaintiff sought orders that:
  2. The court do direct conditional attachment of such property of the Defendant/Respondent as shall be sufficient to satisfy a decree in the sum of Kshs. 38,917,000/=
  3. That in the alternative the defendant/Respondent be ordered to furnish security equivalent to the sum of Kshs. 38,917,000/= to satisfy any decree that may be passed against it.
21. In the first instance, it is worthy to note that the suit is yet to be heard. It is trite that a court if satisfied by affidavit of otherwise that the defendant with intent to obstruct or delay the execution of any decree that may be passed against it:
  - a. Is about to dispose of the whole or any part of the property, or
  - b. Is about to remove the whole or any party of his property or
  - c. May remove the property from the local limits of the courts jurisdiction may direct the defendant to furnish security in the sum as specified in an order or the suit, or the court may require the defendant to place the said property or its value to court pending hearing and determination of the suit.



22. It is curious that the Defendants did not challenge the court orders/ruling dated 20/06/2024 yet they challenge the orders issued on 3/07/2024 when the defendants directors Administrators failed to attend court to show cause why they should not furnish security for any decree they may be issued upon hearing and determination of the suit.
23. The defendant filed a Notice of Appeal dated 24/06/2024 soon after the ruling; but failed to move the court as fast upto expiry of one year and two months when the instant motion dated 18/07/2025 was filed.

On this, the Applicant/Defendant sought for orders to review, vary and/or set aside the court orders based on provisions of Order 45 (1) of the Civil Procedure Rules and Section 80 of the Civil Procedure Act (CPA).

Section 80 CPA provides:-

Any person who considers himself aggrieved:-

- a. By a decree or other form which an appeal is allowed by this Act, but from which no appeal has been preferred; or
- b. By a decree of 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.

Hence this section gives the court power of review its own orders.

24. On the other hand, Order 45 of the Civil Procedure Rules sets the grounds for review thus:-
- a. Discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made; or
  - b. On account of some mistake or error apparent on the face of the record; or
  - c. For any other sufficient reason and whatever the ground there is a requirement that the application has to be made without unreasonable delay.
25. Considering the above legal imperatives, can this court grant to the Applicant orders it seeks in the instant motion?
- It is evident that there is or was an appeal in place evidenced by the Notice of Appeal dated 24/06/2024. The court has not been told by either party that the Notice of Appeal dated 24/06/2024 was withdrawn or is not valid.
26. Section 80 CPR is categorical that (a) a person who is aggrieved by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; may apply for review of the decree or order
27. It is trite that a party cannot concurrently pursue both options of review and appeal at the same time as it would be an outright abuse of judicial process.
28. The Supreme Court of Kenya in the case of *University of Eldoret & Another v. Sitienei* (Supra) held categorically that both options cannot be pursued together. Same position was taken in the cases of *Multipurpose Cooperative Society Ltd v. Serer X3 Others* (supra); *Otieno Ragot & Co. Advocates* (supra).



29. In the latter case, the Court of Appeal rendered that, as rational for the invoking only one option that:-
- “...at the time the application for review was made, the notice of Appeal was in place. In effect it was pursuing the relief of review while keeping open its option to appeal against the same ruling. It was gabbling with the law and the judicial process....”there can be no place for review once an intention to appeal has been intimated by filing a notice of appeal...”
30. In my considered view, the above is what the Applicant is gabbling with the law and the judicial process. The Applicant/Defendant has largely steered away from making any submission on this very vital aspect of the it’s motion.
31. On what seems to be the major ground for the application for review by the Defendant, being is discovery of new and important matter or evidence interms of Order 45 Rule 1 of the CPR (a) and (b) for convenience, and without interrogation in detail, there could have been nothing not in the Defendant’s knowledge all through from the date the suit was filed in 2023 as necessary documents were availed by both parties.
32. The court of Appeal in respect thereof rendered itself in the case of *Rose Kaiza V. Angelo Mpanju Kazia* (supra) that:-
- “Before a review is allowed on ground of a discovery of new evidence it must be established that the applicant had acted with due diligence and that the existence of the evidence was not within his knowledge.....
- It is not only the discovery of new and important evidence that entitles a party to apply for review, but the discovery of any new and important matter which was not within the knowledge of the party when the decree was made”.
33. What I gather in this matter to be new and important matter is clearly stated in its supporting affidavit as valuation reports by quantity Surveyors on the suit property dated 8/08/2025 for a sum assessed on the works at Kshs. 1,523,665.
- This discovery, over a year after the impugned ruling is what the Applicants deem to be an error on the face of the record as at 20<sup>th</sup> June 2024 when such report was not provided to the court prior to the ruling.
34. Suffice to state that upon the totality of material placed before the court by both parties, I find no reason or at all upon which the application dated 18/07/2025 could be allowed.
35. It is dismissed with costs to the Plaintiff/Respondent.

Orders accordingly.

**DELIVERED DATED AND SIGNED AT NAIROBI THIS 5<sup>TH</sup> DAY OF FEBRUARY, 2026.**

.....  
**JANET MULWA.**  
**JUDGE**

