



REPUBLIC OF KENYA



**Juttla v Loreto Convent Msongari School & another (Civil Suit
167 of 2014) [2026] KEHC 1010 (KLR) (Civ) (5 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1010 (KLR)

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

**CIVIL
CIVIL SUIT 167 OF 2014**

**SN MUTUKU, J
FEBRUARY 5, 2026**

BETWEEN

PRABHJOT KAUR JUTTILA PLAINTIFF

AND

LORETO CONVENT MSONGARI SCHOOL 1ST DEFENDANT

AHMED SALEH 2ND DEFENDANT

RULING

The Applications

1. This ruling relates to two (2) applications, both brought by Prabhjot Kaur Juttla (the Plaintiff). The first application is the Notice of Motion dated 16/06/2025 (the first application), brought under Sections 1A, 3, 3A and 63(c) & (e) of the *Civil Procedure Act* (CPA); Order 45, Rules 1, 2 & 4, and Order 51, Rule 1 of the Civil Procedure Rules (CPR) and Sections 97 & 103 of the *Land Act*.
2. It seeks the following orders:
 - i. That this Honourable Court be pleased to review its orders issued on 2.05.2025 in respect of payment of Kshs. 10,000,000/- as having been made on 17.10.2023 and not 12.09.2023 and thus recalculate the correct interests payable to the plaintiff on the decretal amounts.
 - ii. That this Honourable Court be pleased to review orders appropriating payments made by the defendant when there was no such indications by the defendants and thus make a finding that any outstanding payment should attract interests until there is payment in full.
 - iii. That this Honourable Court be pleased to review the judgment of 7.12.2022 and provide that costs were to attract interests from the judgment until payment in full.



- iv. That the costs of the application be borne by the defendants.
3. The 1st Application is supported by the grounds expressed on the face of it and in the Supporting Affidavit of the Plaintiff/Applicant sworn on 16/06/2025 that in its ruling delivered on 2/05/2025, the court upon determining that the date of receipt of payment of a sum of Kshs. 10,000,000/- by the Plaintiff was 12/09/2023, applied the said date in tabulating the interest payable to the Applicant; that to the contrary, her advocates on record received the aforesaid sum on 17/10/2023 and that in applying the date of 12/09/2023, the court denied her interest of over 36 days. She deposed that despite Loreto Convent Msongari School and Ahmed Saleh (the 1st and 2nd Defendants/Respondents) having not indicated the amounts which were paid in settlement of the decree issued in the present suit, the court by way of the aforesaid ruling, appropriated the paid amounts in a manner that was prejudicial to her interests and that the costs awarded in the suit ought to attract interest from the date of judgment until payment in full.
4. The 1st Application has been opposed by the Respondents jointly through a Replying Affidavit sworn by Sister Mary Wairimu Gitau on 27/08/2025 deposing that the 1st Application is frivolous and an abuse of the court process and that no proper grounds have been established to warrant the prayers sought therein; that the decree in this matter is now fully settled and currently there are no outstanding sums owed to the Plaintiff; that there was an overpayment made by the Defendants, to the tune of Kshs. 778,651.64, which the Respondents are entitled to a refund by the Applicant and that the Defendants cannot be faulted for any administrative delays in the release of any funds earlier paid by them.
5. The defendants have stated that allowing the 1st Application would greatly prejudice them and have urged the court not to allow the Application, arguing that prayers (ii) and (iii) of the 1st Application should not be considered as they constitute grounds for appeal rather than review and that the Plaintiff ought to have filed an appeal challenging the ruling or order in question.
6. The second application is the Chamber Summons Reference dated 16/09/2025 (the 2nd application). It was filed by the Plaintiff under Sections 1A, 3A and 3B of the CPA; and Regulation 11(c) of the Advocates Remuneration Order. It is supported by the grounds set out on its body and in the Supporting Affidavit of the Plaintiff. The 2nd applications seeks the following orders:
- i. That the entire ruling delivered by Honourable Silvia Motari on 29.08.2025 be set aside and struck out.
 - ii. That this Honourable Court be pleased to declare that there has been no overpayment by the defendants.
 - iii. That any other Deputy Registrar of the High Court be directed to calculate the proper amounts owing to the plaintiff in this matter.
 - iv. That costs of this Application be provided for.
7. By way of her supporting affidavit, the Plaintiff has deposed that, vide the ruling delivered on 29/08/2025 the learned Deputy Registrar declared that the Defendants had made an overpayment to the tune of Kshs. 778,651.64 in the absence of any evidence to indicate payment of a sum of Kshs. 1,182,264/- by the Defendants.
8. The Plaintiff has faulted the learned Deputy Registrar for allowing the Defendants' application for review and for determining prayers not requiring consideration at that stage instead of considering prayer (iv) of the application dated 5/06/2025.



9. It is deposed that the learned Deputy Registrar misdirected herself by considering and making a finding on matters not before her and that she did not test the veracity of the documentation tendered by the Defendants in claiming that they had overpaid the decretal amount.
10. The Defendants have opposed the 2nd Application through the following Grounds of Opposition dated 7/10/2025:
 - a. That the application is filed in flagrant violation of the well-established legal doctrine and statutory provisions relevant to the subject application and the same is devoid of merit whatsoever or at all.
 - b. That the application is fatally defective for want of form and law.
 - c. That the Applicant has opted not to file an Appeal against the Ruling by Hon. Silvia Motari dated 29.08.2025 and the Applicant wants to re-litigate in the Application which is essentially an Appeal in disguise on matters the court has already decided.
 - d. That the application has been lodged in bad faith after unreasonable delay and is thus incompetent.
 - e. That the application is filed as an afterthought to further frustrate the refund of the overpayment of the decretal amount paid to the Applicant thus delaying the matter further in court which the court should frown upon.
 - f. That the application is an abuse of the court process and devoid of any merit.
 - g. That this application is frivolous, vexatious and scandalous.
 - h. That the application as presently constituted will occasion miscarriage of justice and great prejudice to the Defendants/Respondents if it is allowed since the Defendants/Respondents have fully settled the claim to the extent it was found liable and there is an overpayment due to the Applicant.

Written Submissions

11. The two applications were canvassed through written submissions. The Plaintiff had not filed written submissions at the time of writing this ruling. In their submissions, the Defendants have reiterated their earlier averments, that the two (2) applications are an afterthought and are purely intended to prevent them from receiving a refund on the overpaid decretal sum of Kshs. 778,651.64.
12. In respect of the first application, the Defendants have submitted that the learned Deputy Registrar correctly tabulated the interest which accrued on the decretal amount and correctly tabulated the amounts received by the Plaintiff, from the Defendants; that the Plaintiff was given every opportunity to file a response before ruling was delivered on 2.05.2025 and hence the first application has been brought in bad faith and that no basis has been laid for seeking to set aside the abovementioned ruling. The Defendants have relied on *Richard Nchapai Leiyangu v IEBC & 2 others-Civil Appeal No. 18 of 2013* where the Court of Appeal stated that the discretionary power of the courts in setting aside an ex parte judgment or order is aimed at avoiding injustice or hardship resulting from an accident or excusable mistake but is not aimed at assisting any person who deliberately seeks to obstruct or delay the course of justice.
13. In respect of the second application, it is the Defendants' joint submissions that the application essentially seeks to re-litigate issues which have been conclusively determined by the learned Deputy Registrar, especially on the question of overpayment of the decretal sums; that no fault can be found



in the learned Deputy Registrar’s decision and that there has been an inordinate delay in bringing the second application by dint of Rule 11(1) of the Advocates Remuneration Order which provides that a Reference ought to be filed within 14 days of delivery of the impugned decision by a taxing officer.

14. The Defendants cited the cases of *Nyamogo & Nyamogo Advocates v Kenya Bus Services* [2004] KEHC 1369 (KLR) and *Ahmednasir Abdikadir & Co. Advocates v National Bank of Kenya Limited* (2) [2006] 1 EA 5 where the respective courts reasoned that pursuant to Rule 11(1) of the Advocates Remuneration Order, a party objecting to the decision of a taxing officer must file an objection within 14 days of the impugned decision and must thereafter file a Reference within 14 days of receipt of the reasons thereof.

Analysis and Determination

15. I have considered the two (2) applications, the Replying Affidavits and rival submissions. In respect of the first application, the Applicant seeks, under prayers (i) and (ii), a review of the ruling and order made on 2.05.2025, particularly on the subject of Kshs. 10,000,000/- earlier paid to the Plaintiff and the appropriation of payments made by the Defendants in satisfaction of the decree, respectively.
16. The general legal principle on review, as provided under Section 80 of the *Civil Procedure Act*, CPA, and Order 45 of the CPR is that a review ought to be sought before the court which passed the decree or issued the order in question. In the present application, the ruling and resulting order of 2.05.2025 was made by Hon. Silvia Motari in her capacity as Deputy Registrar, Civil Division. The said order did not therefore derive from this court.
17. In view of the foregoing circumstances, I am of the considered view that this court does not constitute the proper forum for reviewing the aforesaid ruling and order. I therefore decline to address and determine prayers (i) and (ii) of the 1st application and direct that the Applicant is at liberty to pursue those prayers before Hon. Silvia Motari for consideration.
18. Prayer (iii) of the 1st application seeks a review of the judgment delivered in this suit on 7.10.2022, specifically on the issue of costs, which the Plaintiff desires to attract interest from the date of judgment until payment in full. The Plaintiff’s averment, in sum, is that any and all outstanding amounts emanating from the decree should attract interest, including any costs awarded by the court. In contrast, the Defendants have submitted that the prayers sought are an afterthought and that no basis has been laid to warrant the review sought, adding that the Plaintiff ought to have filed an appeal rather than a review.
19. The guiding principles in seeking review are found under Section 80 CPA and Order 45 of the CPR as follows:

“ 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.”

20. These principles can be summarized as follows, that an applicant seeking review must demonstrate that there is:
- a. 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
 - b. some mistake or error apparent on the face of the record, or
 - c. any other sufficient reason.
21. I have observed that the Plaintiff has not stated which of the principles for review she is relying in bringing the first application.
22. My perusal of the record shows that it is not in dispute that upon considering the totality of the material on record, this Court, (Sergon, J.) awarded the Plaintiff a gross sum of Kshs.17,632,643/- less general damages of Kshs. 3,000,000/- earlier paid, leaving a net total of Kshs.14,632,643/-. The learned Judge also awarded the Plaintiff costs of the suit and interest on the general and special damages.
23. Section 27 of the CPA provides that:
- “(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:
- Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.
- (2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.” (emphasis added).
24. An award on costs and interest is discretionary.
25. My careful analysis and consideration of the material placed before me in respect of the 1st Application, I have not come across sufficient evidence to persuade me that the principles for granting a review have been established in to warrant an order for review.
26. Further, it is evident that while the judgment was delivered on 7.10.2022, the Plaintiff without explanation, did not file an application for review and an or an order for costs until 16.06.2025. There has been an inordinate delay on the part of the Plaintiff. In the circumstances, I decline to grant prayer (iii) of the 1st Application with the result that first application is hereby dismissed with costs.
27. Turning on the second application, I have noted that the Defendants through their Grounds of Opposition, have termed the said application as fatally defective for want of form and law and that the Plaintiff ought to have filed an appeal instead of this application. The Defendants have also urged



- the court to find that the second application was filed outside the statutory timelines and is therefore time barred.
28. The record shows that the ruling sought to be set aside was delivered by Deputy Registrar, Hon. Silvia Motari, on 2.05.2025. That ruling addressed prayer (iv) of the Plaintiff's application dated 5.06.2025. The Plaintiff, being aggrieved by the said ruling, has filed the second application being a Chamber Summons Reference.
 29. It is a matter of general legal principle that a party who wishes to challenge the decision of a Magistrate or Deputy Registrar, shall (save in instance of decisions arising from taxation proceedings) do so by way of an appeal. Order 42, Rule 1 of the CPR sets out the form of filing appeals by stipulating that every appeal to the High Court shall be by way of a memorandum of appeal.
 30. In the present instance, given that the ruling did not relate to taxation proceedings, the provisions of Paragraph 11 of the Advocates Remuneration Order referenced in the second application as well as in the Defendants' written submissions, would not apply. It therefore follows that the Plaintiff was required to file an appeal rather than a Reference, against the decision and not a Reference, as was done in this matter.
 31. Be that as it may, I have invoked Article 159(2)(d) of *the Constitution* which calls upon the courts to administer justice without undue regard to procedural technicalities, it is my view that the mere fact that the Plaintiff filed a Reference rather than an appeal, would not necessarily render the second application fatally defective and deserving of an automatic dismissal. On that basis, I hereby decline to dismiss or strike it out the second application.
 32. On the second preliminary issue touching on whether the second application was filed outside the statutory timelines by dint of Paragraph 11 of the Advocates Remuneration Order, I refer to my earlier finding that the impugned ruling did not arise from taxation proceedings and hence the above provision would not apply to the present circumstances.
 33. Further, having considered the fact that the second application was brought slightly over one (1) month from the date of delivery of the impugned ruling, I am of the view that the same was filed without unreasonable delay. Consequently, the preliminary grounds raised by the Defendants automatically collapse.
 34. Turning to the second application, I have considered the rival positions taken by the parties as set out above. I have read the court record. It shows that the costs awarded to the Plaintiff in the suit were taxed at a sum of Kshs. 616,662.86 vide a taxation ruling delivered by Hon. Eric Wambo (Deputy Registrar) on 21.06.2024.
 35. Thereafter, the Defendants jointly filed an application dated 26.11.2024 seeking clarification of the interest accrued on the general and special damages awarded to the Plaintiff, taking into account the sums already paid by the Defendants, and upon doing so, to confirm and order that the interest thereon has been fully paid. The said application was opposed by the Plaintiff. The Honourable Deputy Registrar, vide a ruling delivered on 2.05.2025, found that the interest tabulated on general and special damages was Kshs. 1,906,115.46 and Kshs. 2,096,158/- respectively and that the interest amount had been fully settled by the Defendants, but that out of the taxed costs of Kshs. 616,662.86 a sum of Kshs. 403,612.36 was still outstanding at the time.



36. The record shows that the Defendants subsequently filed an application dated 5.06.2025 seeking various prayers; however, of relevance to these instant proceedings is prayer (iv) which reads as follows:
- “That the court be pleased to review, vary or set aside the ruling delivered on 2nd May 2025 on the amounts due to the plaintiff/respondent and declare that the claim is fully settled.”
37. Pursuant to the directions given by this court on 11.06.2025, the Plaintiff was to file a response to the application of 5.06.2025 with the Defendants having corresponding leave to file a response, within 14 days thereof; and that the matter be placed before the learned Deputy Registrar, Hon. Silvia Motari, on 17.06.2025 to deal with the abovementioned prayer (iv). It is apparent from the record that the Plaintiff filed a replying affidavit and the parties thereafter filed their respective submissions in respect of prayer (iv).
38. In her ruling delivered on 29.08.2025, the learned Deputy Registrar found that the Defendants had tendered evidence to demonstrate that they had paid an additional sum of Kshs. 1,182,264/- to the Plaintiff through her advocate, which evidence had not previously been tendered in court and which was therefore not considered in the earlier ruling of 2.05.2025. For those reasons, the learned Deputy Registrar granted the order for review sought, under the ground of sufficient reason. She further found that in view of the additional payment of Kshs. 1,182,264/- the outstanding taxed costs of Kshs. 403,612.36 could be deducted therefrom leaving an excess sum of Kshs. 778,651.64 which the Defendants would be entitled for a refund. This ruling triggered the second application.
39. Upon my consideration of the averments for and opposing the second application, as well as my re-examination of the material pertaining to the application dated 05.06.2025 it is my view that the key issue arising for determination is whether the learned Deputy Registrar correctly considered the prayer before her and whether she arrived at a reasonable finding.
40. From my re-examination of the record, it is not in dispute that the Defendants made various payments to the Plaintiff, in satisfaction of the decree. The contention lies with the sum of Kshs. 1,182,264/- which was acknowledged as having been paid, by the learned Deputy Registrar. The other contention lies in whether the learned Deputy Registrar properly considered the grounds for review.
41. On the subject of review, having set out the principles for granting or refusing a review earlier in this ruling, while it may be that the Defendants opted to rely on the principles of ‘error apparent on the face of the record’ and ‘new and important evidence,’ I do not think that the learned Deputy Registrar was necessarily prohibited from exercising her discretion by considering the additional principle of ‘sufficient reason.’
42. Further to the foregoing, upon my study of the impugned ruling, I have not come across anything to indicate that the learned Deputy Registrar considered extraneous factors or arguments as claimed by the Plaintiff. It is clear that what was before her for consideration and determination was the pertinent issue whether the decretal sums owed to the Plaintiff had been fully paid, and which she did.
43. On the subject whether it was established that an additional sum of Kshs. 1,182,264/- had been paid in addition to the earlier paid as per the ruling of 2.05.2025 referenced hereinabove, I have taken into account the Bank Statement and Deposit Advice which was presented before the learned Deputy Registrar, indicating that the aforesaid sum was paid to the Plaintiff’s advocate on 3.01.2024 but which evidence had not been previously presented before the said judicial officer at the time of writing her earlier ruling of 2.05.2025. I did not come across any denial by or on behalf of the Plaintiff, of receipt of the above sum.



44. I have equally taken into account the learned Deputy Registrar's observation that the Plaintiff's advocate was informed of the payments made vide a letter dated 14.05.2025 and that there is nothing to indicate that the said advocate did not receive the email or the sum in question.
45. In view of all the foregoing circumstances and in the absence of any contrary evidence or material, I am satisfied that the learned Deputy Registrar correctly applied her mind and the law, thereby arriving at a reasonable finding. I am further satisfied that upon taking into account the excess payments made by the Defendants, it was only reasonable for the learned Deputy Registrar to order that the outstanding taxed costs be deducted therefrom, thereby leaving an overpayment of Kshs. 778,651.64 which the Defendants were naturally entitled to a refund on.
46. In view of all the foregoing circumstances therefore, I see no reason to fault the learned Deputy Registrar's reasoning and decision on the issue, and I see no reason to disturb her ruling delivered on 29.08.2025.
47. The upshot therefore is that both the Notice of Motion dated 16.06.2025 and the Chamber Summons Reference dated 16.09.2025 are devoid of merit and are hereby dismissed. The 1st and 2nd Defendants shall have the costs of both applications, to be borne by the Plaintiff.
48. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 5TH DAY OF FEBRUARY 2026.

S. N. MUTUKU

JUDGE

In the presence of:

1. Mr Kirimi David for the Applicant.
2. Mr. Gaya for the Respondent.

