



**Kaur v Rabala & Company Advocates (Commercial Miscellaneous Application E1267 of 2020)  
[2026] KEHC 1716 (KLR) (Commercial and Tax) (12 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1716 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL MISCELLANEOUS APPLICATION E1267 OF 2020**

**BK NJOROGE, J  
FEBRUARY 12, 2026**

**BETWEEN**

**MOHINDER KAUR ..... PLAINTIFF**

**AND**

**RABALA & COMPANY ADVOCATES ..... DEFENDANT**

**RULING**

1. This Ruling is in respect to the Defendant/Applicant's application by way of a Notice of Motion dated 18<sup>th</sup> February 2025. It is supported by the Affidavit of Donald Odhiambo Rabala sworn on the same date as the application.
2. It seeks the following orders;
  - 1) Spent.
  - 2) That the Honourable Court be pleased to extend stay of execution period pending the hearing and determination of the application.
  - 3) That the Honourable Court do hereby rectify errors apparent on the face of the record of its judgment issued on the 23<sup>rd</sup> January 2025.
  - 4) That the Defendant/Applicant has found new evidence which was not available to the Court during the trial proceedings of the matters herein. The Bill of Cost attached herein clearly prove Statement of Accounts dated 10<sup>th</sup> June 2022 for legal services offered to the Plaintiff/Respondent by the Applicant/Advocate.
  - 5) That the Applicant/Advocate risks losing his well-deserved legal fees if he releases the retained account to the Client/Respondent considering that there are ongoing taxation matters before



the Deputy Registrar for legal services rendered to the Client/Respondent considering that the Respondent has no known registered office and is a foreigner. The Respondent is a freight (sic) risk and has no fixed abode.

6. That the judgment made an error of law and fact for failing to find that Advocates Disciplinary Tribunal has jurisdiction to order release of funds held in Advocates Client Account as per the dictates of Section 60(4) of the *Advocates Act*. This means that the Applicant risks paying the client twice due to conflict of jurisdiction between the Advocates Disciplinary Tribunal and Court herein in relation to power to order release of retained /withheld funds to the client.
  7. That the Honourable Court do hereby rectify its order/finding to the effect that an Advocate is liable to allocate to a client for interest on an Advocate's Client Account.
  8. That the Honourable Court during the reading of the judgement in the virtual open Court granted the Defendant/Applicant (30) thirty days stay of execution and the final written judgment that was omitted.
  9. That the judgment made a substantial error by disregarding the legal principle of general lien by ordering the Appellant/Advocate to release/pay/deliver the funds held in Advocate's Client Account when there are pending Taxation/Assessment of costs before the taxing master Deputy Registrar for services rendered to the Respondent/Client.
  10. That the judgement made an error of fact in finding that the Applicant Advocate's Statement of Accounts dated 10<sup>th</sup> June 2022 is not proved and or substantiated whilst there are pending matters/bills of costs awaiting taxation before the taxing master/Deputy Registrar for legal services offered to the Respondent/Client by the Applicant. The Respondent never opposed the said Statement of Accounts. It is unreasonable for someone (Advocate to release funds to someone (client) when the issue of costs and legal fees application is yet to be determined.
  11. That it is in the interest of justice the claimant should not be punished for a mistake on the part of the Court.
3. The application is opposed by the Plaintiff/Respondent through a Replying Affidavit of MOHINDER KAUR sworn on 19<sup>th</sup> May 2025.
  4. The Applicant has also filed a Further Affidavit sworn on 9.7.2025.

### **Issues for Determination**

5. The Court has considered the application, the response and the written submissions by Counsel for the parties. The Court frames a single issue for determination as follows;
  - a) Whether the Court should review its judgment issued on 23.1.2025 and issue the orders sought.

### **Analysis**

6. The Court notes that there is no record of any execution having taken place. For that reason, the Court need not consider the orders of stay sought. The reason being that nothing turns on such a prayer at this point in time. The Court was called upon to grant a stay of execution pending the hearing of this application. Having heard and considered the application, the Court notes that no stay of execution is sought post the delivery of this Ruling.



**Whether the Court should review the judgment issued on 23.1.2025 and issue the order sought.**

7. The powers of the Court to review its own judgment lie pursuant to Section 80 of the [Civil Procedure Act](#) which states as follows:

80. Review

Any person who considers himself aggrieved—

- (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
- (b) by a decree or 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.

8. The Court has also been referred to Order 45 Rule 1 of the Civil Procedure Rules, which states as follows:

Application for review of decree or order [Order 45, rule 1.]

(1) 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.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.

9. In the application before the Court, Counsel for the Applicant submits that the Court ought to make an inquiry under Order 32 Rule 15 of the Civil Procedure Rules. This is as to the mental capacity of the Plaintiff and her capacity to protect her interest.

10. The Court has perused the application by way of a Notice of Motion dated 18.2.2025 and the affidavit in support. No such allegations as to the mental incapacity of the plaintiff has been raised. The request for this inquiry is made by way of a broadside in the body of the written submissions. To this Court, such an issue ought to have been raised at the time when the Court was called upon to make a determination in its judgment issued on the 23<sup>rd</sup> January 2025.

11. The Court notes that the Plaintiff is represented by Counsel and that the request for an inquiry is made after judgment. The Court is unable to make out the basis of this strange request. This is other than it is a red herring meant to derail the Court from the proceedings at hand. The Court finds there is no basis laid out or any documentary evidence by way of medical reports to support such a request.



12. Turning to the issue at hand, the Applicant and the Respondent enjoyed an Advocate/Client relationship. The Applicant represented the Respondent in a conveyance transaction. A dispute arose on the issue of funds received by the Applicant as Counsel for the Respondent pursuant to that transaction. The Respondent maintained that the funds received were not remitted to her as per her instructions.
13. The Respondent initiated these proceedings against the Applicant. This culminated in a judgment delivered by my brother Honourable Mr. Justice Visram Aleem Alnashir, who directed as follows:
  - a) I hereby order payment or delivery up by the Advocate to the Plaintiff of the sum of Kshs. 13,152,047/= within the next 14 days together with interest at court rates from the date of filing the Originating Summons until payment in full.
  - b) In the event of default, judgment is hereby entered against the Defendant for the above amount together with interest at court rates from the date the filing of the suit until payment in full.
  - c) Costs shall be paid by the Defendant.
14. As earlier alluded, there is no evidence of the Applicant having paid these amounts to the Respondent or having complied with the Decree of this Court.
15. Thereafter, on 7.4.2025 Honourable Mr. Justice Visram Aleem Alnashir, recused himself from this matter and referred it to the Presiding Judge for the directions. This matter was subsequently allocated to this Court. It is for that reason that this Court is called upon to consider an application for review, of a judgment that it did not deliver. There was no objection by either party to this Court hearing this application.
16. The Applicant's argument is two prolonged. That there is an error on the judgment that needs to be rectified. He also submits that there is a new and important matter that was not available at the time of the judgment.
17. On the error on the face of the record, the Applicant submits that the Judge did not consider his entitlement to legal fees from the various cases/transactions where the Applicant represented the Respondent.
18. To this Court if the Judge failed to consider such factors, then that cannot be said to be an error on the face of the judgment. That issue can only properly be raised on an Appeal and not by way of a review. Failing to consider crucial factors or evidence in a case is a good ground for an Appeal and not so for a review.
19. This Court as a Court of concurrent jurisdiction cannot impose its mind in the matter at this juncture. It cannot substitute its own thinking and opinions to the judgment of its own brother Judge. If the Applicant strongly feels that certain crucial facts or issues were ignored, the remedy lies in an Appeal. Having stated so, the Court does take note of the earlier judgment and that the Bills of Costs filed by the Applicants were referred to the judgment. They were also considered.
20. As to the issue of fresh evidence or new matters, the Court notes that such evidence ought to be of the nature that was not available to the Applicant during the trial. The Applicant has not demonstrated that it was unaware of such evidence and or was unable to present it to the Court.



21. In the case of *Onyango & 2 others v Awaa & 2 others* [2023] KEHC 26344 (KLR) the Court stated as follows:

The issue of whether or not the appellants are dependants of the deceased and whether or not the trial court ignored evidence on record is, in my humble view, a substantial issue that can only be challenged by way of an appeal and cannot, therefore, be regarded as an error apparent on the face of the record. As was observed in *Abasi Belinda v Fredrick Kangwamu and another* [1963] E.A 557, “a point which may be a good ground of appeal may not be a good ground for review and an erroneous view of evidence or law is not a ground for review though it may be a good ground for appeal.”

22. In *National Bank of Kenya Ltd v Njau* [1997] KECA 71 (KLR) the Court of Appeal stated as follows;

A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.”

23. The Court notes that despite Eleven (11) orders sought in the application (some which are more of statements than prayers), what is sought is a review. The other prayers are merely superfluous.

24. The Court is not persuaded that the application for review is merited. The application is dismissed.

25. As to costs, the same are awarded to the Respondent.

### **Determination**

26. The Application dated 18.2.2025 is dismissed with costs to the Respondent.

27. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS 12<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**NJOROGE BENJAMIN K.**

**JUDGE**

In the presence of;

Miss Muluvi holding brief for Mr. Mutua S.C. for the Plaintiff.

Mr. D. Rabala for the 1<sup>st</sup> & 2<sup>nd</sup> Respondent/Client

Mr. Peter Wabwire - Court Assistant

