REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

COMMERCIAL & ADMINIRALTY DIVISION)

HCC COMM NO E069 OF 2025

HARESH VRAJLAL DAMODARDAS SONI

NARESH JAYANTILAL RANPURA……. PLAINTIFFS/RESPONDENTS

VERSUS

DHAVAL VINODBHAI SONI

SHREEJI ENTERPRISES (KENYA) LTD……. DEFENDANTS/APPLICANTS

RULING

1. This Court delivered a ruling on **11th December 2025,** vide which it found that the plaintiffs/respondents' notice of motion dated **16th October 2025** had merit and allowed it in part. The Court at paragraph 69 held as follows: -

"Based on the foregoing, I issue the following orders: -

(1) An injunction is hereby issued restraining Dhaval Vinodbhai Soni from transferring or otherwise dealing with 1,000,000 shares in the second defendant/respondent, whether by sale, charge, pledge, securitization, or in any other manner, otherwise than in accordance with any directions issued by the 1st and 2nd Plaintiffs, pending the hearing and determination of the suit;

(2) In the interest of justice, the 1st and 2nd Plaintiffs/applicants are restored to their offices of directors of the 2nd defendant/respondent with full privileges; and

(3) Pending the hearing and determination of the main suit, all the decisions regarding the management and operations of the 2nd defendant/respondent shall be made with the unanimous consent of all directors.

2. The defendants/applicants were aggrieved by the said decision and have sought to have it reviewed. The application for review is dated **18th December 2025**. It is brought under sections 3A and 80 of the Civil Procedure Act and Orders 45 and 51, Rule 1 of the Civil Procedure Rules. The defendants/applicants seek the following orders: -

(1) Spent

(2) That this honourable Court does review and modify the order restoring the 1st and 2nd Plaintiffs to the office of director of the 2nd defendant/respondent with full privileges;

(3) That the honourable Court does review and modify the orders issued on **11th December 2025,** requiring the decisions regarding the management and operations of the 2nd defendant/respondent shall be made with the unanimous consent of all directors;

(4) That this honourable Court does grant any other orders and or directions as it may deem fit and just in the circumstances; and

(5) That the costs of this application be provided for.

3. The grounds in support of the said application, as disclosed in the body of the motion and the supporting affidavit of **Dhaval Vinodbhai Soni (**hereafter referred to as **"Dhaval")**, are that the plaintiffs/applicants withheld important information from the Court and misled the Court. They aver that the 1st Plaintiff/respondent is not a director of the 2nd defendant/applicant, having resigned as a director many years ago. Dhaval contended that the plaintiffs/respondents are engaged in competing business, *to wit,* Shreeji Chemicals Ltd, and that having them as directors would paralyze the business of the 2nd defendant/applicant and risk collapsing it altogether. It was further

contended that the relationship between the plaintiffs/respondents and the 1st defendant/applicant was so hostile that it would be impossible to comply with the order requiring unanimity in operational decision-making in respect of the 2nd defendant/applicant, considering the hostility and bad blood existing between the parties. Dhaval urged that it would be in the interest of justice to review or modify the orders issued on **11th December 2025** "*purely for the sake of smooth running of the business and to avoid interrupting and collapsing the business*."

4. In the affidavit in support of the application, Dhaval deposed that the 1st plaintiff/respondent abandoned his duties and absented himself from his workplace at the 2nd defendant/respondent for over 1 year before the filing of this cause, and that he was running a sister company called **Shreeji Chemicals Ltd**, which is in direct competition with the **2nd defendant/applicant,** and that the Haresh had been soliciting business from the clients of the 2nd defendant/applicant. He averred that the Directorate of Criminal Investigations was conducting active investigations into possible fraud by the plaintiffs/respondents. Dhaval contended that, given the hostile environment between them, it would be difficult to reach unanimous decisions regarding the management of the company, and that the orders issued by the Court were likely to do more harm than good.

5. Dhaval prayed that orders issued by the Court be reviewed and or modified in the best interest of the business, customers, and employees.

6. The application was opposed. Mr. **Haresh Vrajlal Damodardas Soni** (hereafter referred to as **"Haresh"**) made a deposition on **14th January 2026**

in which he accused Dhaval of trying circumvent the orders of the Court. He stated that it hadn't been demonstrated that the plaintiffs/respondents made material non-disclosure, or that there was discovery of new important matter or evidence that would justify the grant of review orders.

7. Haresh averred that the 1st defendant/applicant had taken steps which are detrimental to the interest of the plaintiffs/respondents, had removed his and Naresh's access to the company's financial and accounting records, as well as bank records. Regarding the financial records produced, he cast doubt as to their accuracy. In his view, **Shreeji Chemicals Ltd** and **Delta Auto Motors Ltd** do not owe the 2nd defendant/applicant anything, yet it had been alleged that in the accounts that they do.

8. He denied that **Shreeji Chemicals Ltd** competed with the 2nd defendant/applicant. Haresh averred that the review application was based on facts which were within the knowledge of Dhaval at the time the previous application was being canvassed, and that such matters cannot be the basis of a review application.

9. Haresh stated that Dhaval tried to use the criminal process to force them to make concessions regarding the management of the company. Further, he averred that whereas previously Dhaval had expressed readiness to work with them and to provide the requisite accounts, he had now resiled from that position. He denied that he and Naresh couldn't work with Dhaval. He therefore prayed that the application be dismissed for not having merit.

10. With the leave of the Court, the 1st defendant/applicant, Dhaval, deposed to a supplementary affidavit on **20th January 2026,** in which he accused Haresh of clearing out of the office in May 2025 and **Naresh Jayantilal Ranpura** (hereafter referred to as **"Naresh"**) and his sons of doing the same thing in June 2025. He averred that they had not gone back since then. Their absence, it was urged, would present practical difficulties in complying with the order issued by this court requiring unanimity in decision-making. He, however, averred that their offices remained open and were available and that the plaintiffs/respondents had unlimited access to them.

11. Dhaval contended that the 2nd defendant was in good financial standing and contrasted its financial affairs with those of Shreeji Chemicals Ltd, which he stated was already defaulting on its obligations to its banks.

12. He deposed that Shreeji Chemicals Ltd was involved in completing business. In support of this, he attached an agreement between **Shreeji Chemicals Ltd** and **Maisha Minerals and Fertilizer Ltd,** signed on **5th May 2025**. He denied that frivolous complaints were made by him to the Directorate of Criminal Investigations and stated that it was, in fact, the Land Registry that raised the issue of fraudulent land transactions with the Directorate of Criminal Investigations, Mombasa, and not. Dhaval stated that the first thing Naresh did when they got back, after the court issued the impugned orders, was to tell the staff of the 2nd defendant/applicant, "*We are back and will shut down this business and send Dhaval and his brother home*." He averred that this statement was consistent with a toxic relationship between the parties, which would render an amicable working relationship between them impossible.

13. Haresh Soni filed a further replying affidavit on **21st January 2026**. As the said deposition was filed without the leave of the Court, the same was struck out by this Court on **22nd January 2026** during the hearing. I will not, therefore, refer to it in this ruling.

14. Parties made oral submissions on **22nd January 2026**. The plaintiffs/respondents also filed skeleton submissions.

15. Mr. Oonge, learned counsel for the defendants/applicants, submitted that they were seeking review of the orders that this Court made on **11th December 2025** on the grounds that they had discovered new and important matters and evidence, *to wit*, that the plaintiffs were in a competing business and that this wasn't disclosed by the plaintiffs/respondents. He urged that the plaintiffs/respondents did not disclose the fraudulent activities they were engaged in that were detrimental to the business of the 2nd defendant/respondent.

16. Counsel averred that there was an error apparent on the face of the record, as the Court found that Haresh was a director when in fact he wasn't. That being the case, the Court erred in directing that he be reinstated to a position he wasn't in to begin with.

17. Mr. Oonge submitted that the business of the 2nd defendant had greatly improved during the absence of the plaintiffs/respondents. In his view, bringing them back would destabilize a growing commercial entity and be too disruptive.

18. Mr. Oonge prayed that the applications be allowed so that the 2nd defendant/applicant can continue to operate normally pending the hearing and determination of the suit.

19. The application is opposed. Mr. Khagram, learned counsel for the plaintiffs/respondents, submitted that his clients were thrown out of the business. He denied that there had been material non-disclosure. Counsel contended that Haresh's status as a director was conceded in Dhaval's affidavit at paragraph 17.

20. Mr. Khagram submitted that all the information and documents relied upon by the defendants/applicants were in their possession previously. That being the case, it could not be said that new information had been discovered that was not available previously. Counsel stated that it hadn't been shown that Shreeji Chemicals Ltd was in a competing business.

21. It was urged that the accounts produced showed that business was better when the plaintiffs/respondents were involved in its operations and that things actually got worse during their absence. Regarding workplace toxicity, counsel urged that such an allegation was untrue and ought to be rejected by the Court.

22. Counsel denied that the business would be unable to run if they were involved. He contended that if the 1st defendant/applicant were unable to work with the plaintiffs/respondents, he had the option of stepping aside. Counsel prayed that the application be dismissed.

23. In response, Mr. Oonge reiterated that Haresh resigned as a director and was never reappointed. As a shareholder, he was entitled to get a balance sheet, which he would get after the annual general meeting was called.

24. Regarding criminal complaints, counsel averred that these were being addressed in a separate forum by the appropriate authorities. Counsel urged that a case had been made for review. He submitted that it would not be in the interest of any party for the business of the 2nd defendant/applicant to go under.

25. I have considered the application and the affidavits and annexures thereto, as well as the responses of the plaintiffs/respondents. I have carefully and anxiously taken into account the submissions of the parties in light of the facts and the applicable law. In my view, the issue I must determine is whether the ruling I delivered on **11th December 2025** should be reviewed or not.

26. Review of a decree or order is provided for in section 80 of the Civil Procedure Act. The said Act states in the aforesaid section that:

> **"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."**

27. The foregoing provision of the Act is given effect by the Rules. Order 45 Rule 1 of the Civil Procedure Rules, 2010 states that:

> **"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."**

28. It appears to me that the review application in this case is grounded on the discovery of new and important information, an error apparent on the face of the record, and also for sufficient reason. I will first look at what these grounds are at law and then determine whether, based on the facts and the law, a case warranting review of the impugned decision has been made by the defendants/respondents, under all, or one or more of the said grounds.

29. In the case of **Rose Kaiza v Angelo Mpanju Kaiza [2009] eKLR,** the Court of Appeal, while considering an application for review based on the discovery of new and important information, quoted with approval the

commentary by ***Mulla*** on similar provisions of the Indian Civil Procedure Code, 15th Edition at page 2726:

> **"Applications on this ground must be treated with great caution and, as required by r 4(2) (b), the Court must be satisfied that the materials placed before it in accordance with the formalities of the law do prove the existence of the facts alleged. Before a review is allowed on the 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; where review was sought for on the ground of discovery of new evidence but it was found that the petitioner had not acted with due diligence, it is not open to the Court to admit evidence on the ground of sufficient cause. It is not only the discovery of new and important *evidence* that entitles a party to apply for a review, but the discovery of any new and important matter which was not within the knowledge of the party when the decree was made."**

30. Similarly, the Court of Appeal, in the case of **D. J. LOWE & COMPANY LIMITED vs BANQUE INDOSUEZ[1998]eKLR,** stated:-

> **"This particular application we have before us stems from, as pointed out, refusal to review the order of 30th October, 1997. Where such a review application is based on fact of the discovery of fresh evidence, the court must exercise greatest of care, as it is easy for a party who has lost to see the weak part of his case and the temptation to lay and procure evidence which will strengthen that weak part and put a different complexion. In**

such event, to succeed, the party must show that there was no remissness on his part in adducing all possible evidence at the hearing."

31. I have considered what has been stated to be new evidence. It has been urged that Shreeji Chemicals Ltd, a company run by Haresh and his family, competes with the 2nd defendant. In support of this contention, Dhaval attached a road carriage agreement with Maisha Minerals and Fertilizers Ltd, signed on **5th May 2025**, delivery notes, and a copy of the CR 12 in respect of Shreeji Chemicals Ltd. With respect, all these documents would have been available to the defendants/applicants at the time this Court heard the previous application and could have been produced with a bit of diligence. I am therefore not convinced that there has been a discovery of new and important matter or evidence which Dhaval could not have produced previously. Similarly, I am not convinced that there was non-disclosure of material information. The application for review on the said ground, therefore, must fail.

32. The defendants/applicants urged that there was an error apparent on the face of the record. The said error is that this Court found that Haresh was a director when, in reality, he wasn't. Does an error exist in the proceedings that should be reviewed?

33. Courts review decisions that have glaring errors, that are "apparent" on the face of the record, and which do not require elaborate argumentation to establish. In the case of **National Bank of Kenya Ltd v Njau [1997] KECA 71 (KLR)**, the Court of Appeal held that:

"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."

34. A similar holding was made in the case of **Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] KEHC 6379 (KLR)**, the Court stated that:

"Review is impermissible without a glaring omission, evident mistake, or similar ominous error. 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. Where an alleged error is far from self-evident and if it can be established, it has to be established by lengthy and complicated arguments, such an error cannot be cured by an order or review.

The power of review **is available only when there is an** error appare**nt on the** face **of the** record. **I emphasize that** review **proceedings are not an appeal. The** review **must be confined to** error apparent **on the** face **of the** record**, and re-**

appraisal of the entire evidence or how the judge applied or interpreted the law would amount to exercise of Appellate Jurisdiction, which is not permissible."

35. What is Haresh's status? Is he a director, or did he resign, as alleged by Dhaval? This is a contentious point. In the affidavit that Dhaval swore on **5th November 2025,** he made the following averments:

At paragraph 12 - ***"That in 1998 Haresh resigned as a director. I created a trust deed for 49 shares, making his shares 50."***

At paragraph 17 - ***"That upon the restoration of normalcy and the banks' outstanding issues having been resolved, Haresh came back to the office and he has been there on account of his seniority, we fondly refer to him as chairman."***

36. It isn't at all clear to me what "came back to the office" means and how he could be a chairman without being a director. If indeed he is only a shareholder, as has been stated, why does he have an office within the business premises, as Dhaval has conceded? In light of all these, I am not convinced that there is an error apparent on the face of the record. Haresh's position would require elaborate argumentation and adduction of further evidence. I am therefore unable to agree that there is an error apparent on the face of the record that this Court can correct in exercise of the review jurisdiction under section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules.

37. It has also been stated that I could exercise my review jurisdiction as there are sufficient grounds to do so. I must state at the outset that "any other sufficient reason" as contemplated in the ruling does not mean that any "*reason*" is a ground for review. "*Sufficient reason*" must be interpreted "*ejusdem generis*" and is necessarily on the grounds analogous to those in the other 2 grounds of review that I have already discussed. In the case of Republic v Cabinet Secretary for Interior and Co-ordination of National Government Ex parte Abulahi Said Salad [2019] KEHC 12003 (KLR), **the Court considered the question of what sufficient reason is. It stated thus:-**

> **"30. A court can review a judgment for any other sufficient reason. In the case of *Sadar Mohamed vs Charan Signh and Another*, it was held that any other sufficient reason for the purposes of review refers to grounds analogous to the other two (for example, error on the face of the record and discovery of new matter. Mulla in the *Code of Civil Procedure*[20] (writing on Order 47 Rule 1 of the Civil Procedure Code of India), (the equivalent of our Order 45 Rule 1), states that the *expression 'any other sufficient reason'...* means *a reason sufficiently analogous to those specified in the rule*. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out..., would amount to an abuse of the liberty given to the tribunal under the Act to review its judgment."**

38. Dhaval contends that the relationship between the parties is so bad that it would be impossible for them to work together. Is that a bona fide "sufficient ground" to ask for a review, and is it analogous to the other two grounds for review? I note that the parties have previously worked together and had offices in the premises of the 2nd defendant. In paragraph 5 (i) and 5 (ii) of Dhaval's supplementary affidavit, it is averred that the 1st and 2nd plaintiffs/respondents left their respective offices in May & June 2025 and have not been back. At paragraph 28, however, it would appear that 2nd plaintiff/respondent did in fact go back after this Court issued the impugned orders and allegedly told the staff that "*we are back and will shut down this business and send Dhaval and his brother home.*"

39. Having worked together in the past, and noting their mutual interest in seeing the businesses grow and prosper, in part because the various related companies have guaranteed each other's debts, it is hard to see how they won't work together, even for the selfish reasons of not undermining their own personal interests. In my view, the fear that Dhaval has is speculative and not based on any hard, disclosed evidence. I state this as the plaintiffs/respondents are both of the view that they can all work together.

40. That being the case, I am not convinced that "*any other sufficient reasons*" warranting review have been disclosed. Application for review on the said ground similarly fails.

41. I must note that the issues that have been raised call for a quick hearing and determination of the main suit. That is what would lead to the resolution of all the outstanding issues and determine the parties' respective rights. If,

however, the business of the 2nd defendant/applicant becomes impossible to transact, due to the inability of the directors to work together, in the best interest of the business, any aggrieved party can approach the Court for appropriate relief.

42. It is clear from the foregoing that I have found no merit in the application dated **18th December 2025**. Consequently: -

1. I dismiss the Notice of Motion dated **18th December 2025**; and
2. I award the plaintiffs/respondents the costs of the application.

43. In the interest of justice, I direct that the suit be heard on the merits on a priority basis.

44. Orders accordingly.

Dated and **signed** in **Mombasa,** this **24th** day of **February 2026.** Delivered virtually through **Microsoft TEAMS.**

Gregory Mutai

JUDGE

In the presence of:

Mr. Khagram, for the Plaintiffs/respondents;

Mr. Oonge, for the Defendants/Applicants;

Ms. Bancy – Court Assistant.