REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. E373 OF 2024

KHISA COLLINS WANJALA t/a COLLINS KHISA & ASSOCIATES

ADVOCATES.....APPELLANT/APPLICANT

VERSUS

ADVOCATES DISCIPLINARY TRIBUNAL.....1ST RESPONDENT

ALI SHALI ALI (as Attorney/Agent of MADINA MUDHIR MOHAMED).....2ND ..... RESPONDENT

RULING

1. This ruling is in respect to the Notice of Motion dated 8th October 2025 brought under Order 45 Rule 1, Order 1 Rule 10 of the Civil Procedure Rules, Sections 1A, 1B and 80 of the Civil Procedure Act. The Applicant seeks, *inter alia*, orders for the review, setting aside or expunging of the judgment delivered on 6th October 2025 by Hon. Justice Ongeri on grounds that the judgment was premature, issued contrary to directions of the Court, in error on the face of the record, and in violation of the Applicant's right to fair hearing.

2. The Applicant also seeks an order for stay of execution of the impugned judgment.
3. The 1st Respondent did not oppose the application but the 2nd Respondent filed Grounds of Opposition dated 16th October 2025 and submissions opposing the application.

The Applicant's Case

4. The Applicant contends that the impugned judgment was delivered prematurely and contrary to directions. The Applicant explained that on 28th July 2025, the Deputy Registrar directed that the matter be mentioned before Hon. Justice Mrima on 21st October 2025 for directions on the disposal of the appeal. According to the Applicant, the appeal was therefore not ripe for judgment but that on 6th October 2025, he received a call from counsel for the 1st Respondent directing him to appear before Hon. Justice Ongeri for the judgment.
5. The Applicant added that on attending court, he discovered that the judgment had already been delivered. He argued that the delivery of the judgment contradicted the Court's earlier directions.
6. The Applicant claimed that the Judiciary Case Tracking System (CTS) still reflected the matter as scheduled for directions, not judgment and that there was therefore an error on the face of the record. Reliance is placed on the case of ***Paul Mwaniki vs. National Hospital Insurance Fund Board of Management*** **[2020] eKLR**, where the court held that an error on the face of the record must be

self-evident and not require an elaborate argument to be established.

7. It was the Applicant's case that the premature delivery of judgment denied him an opportunity to address outstanding issues, respond to the Respondent's submissions and be present during a critical stage of the appeal.
8. The Applicant invoked the provisions of Order 45 Rule 1 of the Civil Procedure Rules (CPR) that allows review on grounds of error apparent on the face of the record or or any sufficient reason. He further relied on the inherent power of the Court under Section 3A of the Civil Procedure Act.
9. The Applicant urged this court to set aside the impugned judgment *ex debito justitiae.* Reliance was placed on ***Provincial Insurance Co. EA Ltd vs. Nandwa*** **[1995]**, quoted in ***Bonaventure Tours vs. Rose Chebet*** **[2007] eKLR** where it was held: -

> ***"Where a decision is a nullity, the Court in its inherent jurisdiction can set aside its own order ex debito justitiae."***

The Respondents' Case

10. The 2nd Respondent filed Grounds of Opposition dated 7th November 2025 wherein he contends that the application is bad in law and is an attempt at a "second bite of the cherry," the court is **functus officio** and that the Applicant should instead file an appeal, not an application for review.

11. The 2nd Respondent further states that the application does not meet the threshold for review and that the applicant will not suffer any prejudice if the application is not allowed as he may still file an appeal.
12. He argued that the impugned judgment was delivered on merit as both parties had filed their respective submissions. He added that the directions issued by Hon. Justice Ongeri on 8th September 2025 included an express judgment date of 6th October 2025, which the Applicant failed to attend.
13. It was the 2nd Respondent's case that there is no error on the face of the record as alleged by the Applicant. Reliance was placed on the decision in ***National Bank of Kenya vs. Ndungu Njau*** **[1997] eKLR**, where it was held: -

    "A review cannot be granted merely because another Judge could have reached a different conclusion… It must be shown that the error is self-evident."
14. The 2nd Respondent submitted that the application does not meet the threshold for review as no new evidence has been discovered and no clerical mistake or legal error is shown.

Issues for Determination

15. From the pleadings and submissions, I find that the following issues arise for my determination: -
    a) ***Whether the judgment delivered on 6th October 2025 was premature and contrary to court directions.***

b) ***Whether the alleged premature delivery constitutes an error apparent on the face of the record under Order 45 Rule 1 CPR.***

c) ***Whether the Applicant has met the threshold for review or setting aside of the judgment.***

d) ***Whether the court is functus officio.***

e) ***Whether the Applicant is entitled to the orders sought.***

Analysis and Determination

16. On the first issue of whether the judgment was premature and contrary to court directions, the record confirms that on 28th July 2025, the Deputy Registrar directed that the matter be mentioned for directions on 21st October 2025 before Hon. Justice Mrima. A subsequent mention however occurred on 8th September 2025 before Hon. Justice Ongeri, when the Respondent was directed to file submissions within 7 days, and the judgment date was thereafter set for 6th October 2025. The Respondent filed submissions on 17th September 2025. The record reveals that even though the Applicant did not attend the mention of 8th September 2025 he had filed submissions earlier on 14th February 2025.
17. My finding is that even though the earlier directions set 21st October 2025 as a mention date, the later mention superseded the earlier one. Judgment was therefore not delivered prematurely since both parties had filed their respective submissions.

18. On the 2nd issue of whether the matter presents an error apparent on the face of the record, it is trite that an error apparent must be self-evident, not requiring long arguments to establish. (See ***Nyamogo & Nyamogo Advocates vs. Kogo*** **[2001] eKLR).**
19. In the present case, I note that the Applicant has not demonstrated that there is any error on the face of the impugned judgment that warrants a review. The Applicant appears to be unhappy with the fact that the judgment was delivered on an earlier date than the date that the matter had been scheduled for mention.
20. My take is that the CTS reflecting an earlier date for directions is not in itself an error warranting review as no self-evident error has been highlighted on the judgment itself.
21. On whether the Application meets the threshold for review under Order 45 of the CPR, I find that none of the grounds listed under the said Order has been met as the Applicant did not demonstrate that he had discovered any new evidence, or that there was a mistake on the face of the record or any sufficient reason to warrant a review.
22. I find that the process leading to the judgment was proper in light of the later directions and that the judgment cannot be said to have been delivered prematurely considering that both parties had filed their respective submissions. My take is that in the event the Applicant's grievance concerns the correctness of the judgment, then to correct avenue for redress should be an appeal, not review. I am guided by the

decision in ***National Bank of Kenya vs. Ndungu Njau*** **(supra)** where it was held that a review is not an avenue to re-argue a case or correct a judge's findings.

23. I find that the threshold for review has not been met.
24. On whether the Court is functus officio, it is trite that a court becomes functus officio after delivering final judgment unless there is a clerical error or review grounds exist. In the present case, neither situation is present.
25. I find that the judge who delivered the judgment is functus officio and that this court may only exercise review jurisdiction if grounds for review exist. Needless to say, I have already found that the grounds for review do not exist.
26. In sum I find that the impugned judgment was delivered pursuant to lawful directions and that the instant application is therefore not merited. The Applicant's motion is accordingly dismissed with costs to the 2nd Respondent.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29TH DAY OF JANUARY, 2026.

HON. W. A. OKWANY

JUDGE

29/01/2026

FOR APPELLANT ……

FOR THE RESPONDENT ……

COURT ASSISTANT Uber