

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
HCCOMM NO. E564 OF 2024

**IN THE MATTER OF SALE OF L.R. NO. 1160/1137, L.R. NO.
1160/1138 AND L.R. NO. 1160/798 BY THE
ADMINISTRATORS OF THE ESTATE OF THE LATE GREVILLE
RICHARD GUNSON TO YOUTH LIMITED
AND
IN THE MATTER OF AN APPLICATION FOR AN ORDER
AGAINST THE RESPONDENT FOR PAYMENT OF USD
74,115.78**

VANESSA

MURRAY.....APPLICANT/RESPONDENT

VERSUS

**PETER KIMANI KAIRU T/AKIMANI KAIRU &
COMPANY**

ADVOCATES.....RESPONDENT/APPLICANT

RULING

1. The matter before the Court is the Notice of Motion dated 31st July 2025 by the Respondent/Applicant seeking review of the judgment delivered by this Court on 24th July 2025. By that judgment, the Court ordered that the Applicant be paid the sum of USD 74,115.78 together with interest at court rates from 9th June 2021 until payment in full.

2. The Respondent/Applicant seeks review on the ground that the award of interest at court rates on an amount denominated in United States Dollars produced an unintended and unjust result. The Respondent/Applicant prays that the judgment be varied so that interest be computed on the Kenya Shillings equivalent of the judgment sum rather than on the amount expressed in foreign currency. The Respondent/Applicant also seeks an order of stay of execution of the judgment. The application is supported by the affidavit of Peter Kimani Kairu, sworn on 31st July 2025.
3. The Applicant/Respondent opposes the application by way of a replying affidavit sworn on 13th October 2025 and a supplementary affidavit. The Applicant/Respondent contends that the Court's judgment clearly determined both the principal sum and the interest payable, and that the present application is, in substance, an attempt by the Respondent/Applicant to re-litigate issues already determined by the Court.
4. The Applicant/Respondent further deposes that the principal sum of USD 74,115.78 was eventually paid on 8th October 2024 and that the appropriate exchange rate for purposes of calculating interest is the rate prevailing on the date of payment. She relies on the decision in **Heco Uberseehandel v Mac's Pharmaceutical Ltd Civil Appeal No. 4 of 1999**, which held that where judgment is expressed in a foreign currency, the conversion into local

currency should ordinarily be done at the exchange rate prevailing on the date of payment or enforcement.

Analysis and determination

5. Having considered the application, the affidavits and the submissions by the applicant, the sole issue for determination is whether the Applicant/Respondent has satisfied the legal threshold for review of the judgment delivered on 24th July 2025.
6. The jurisdiction of this Court to review its own orders is provided under Section 80 of the Civil Procedure Act and Order 45 rule 1 of the Civil Procedure Rules.
7. Section 80 of the Civil Procedure Act provides that:

“Any person who considers himself aggrieved—

1. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred or

2. by a decree or order from which no appeal is allowed by this Act, 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.”

8. While the procedure framework is outlined in Order 45 Rule 1 of the Civil Procedure Rules, which provides:

“Any person considering himself aggrieved by a decree or order... 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 on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, may apply for a review.”

9. It is well settled that a review is confined to the grounds set out under Order 45 and cannot be used as a means of re-arguing or re-litigating matters already determined by the Court. An erroneous conclusion of law or evidence is not a ground for review but may constitute a ground for appeal. The Court of Appeal stated this principle in **Francis Origo & Another v Jacob Kumali Mungala [2005] eKLR**.

10. From the record, the Respondent/Applicant’s case is premised on the ground of an alleged error apparent on the face of the record. The impugned judgment expressly stated that: *“The applicant is awarded interest on the sum of USD 74,115.78 at court rates from 9th June 2021 until the date of actual payment”*.

11. That order addressed both the quantum and the date from which interest accrues.

12. The Respondent/Applicant asks this Court to alter the manner of implementation of that order by directing that the judgment sum be converted into Kenya Shillings before interest is calculated. The argument advanced is that the Court inadvertently awarded interest in a manner that results in an inequitable outcome.
13. In my view, the complaint advanced does not disclose a mistake or error apparent on the face of the record, nor does it demonstrate the discovery of new and important evidence bearing on the correctness of the judgment. The judgment is clear and unambiguous and does not require clarification.
14. Rather, the Respondent/Applicant's grievance is directed at the substantive effect of the judgment itself. Such a grievance properly lies by way of appeal and not review.
15. The Court of Appeal in **National Bank of Kenya Ltd v Ndungu Njau [1997] eKLR** stated:
“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission...It will not be granted merely because the court has taken a different view of the matter.”
16. A review is not intended to enable a court to reconsider its judgment merely because another view is possible. The Court must also bear in mind that the jurisdiction of review is a narrow one. The power of review is intended to correct

manifest errors and not to afford a party a second bite at the cherry.

17. To permit such a course proposed by the Applicant would undermine the principles of finality in litigation and judicial economy. A court cannot be invited to sit in appeal over its own decisions under the guise of a review. Where a party is dissatisfied with a ruling, the proper recourse lies in an appeal.
18. I am therefore not persuaded that the applicant has demonstrated the grounds necessary to warrant review of the judgment.
19. For the reasons given, the Notice of Motion dated 31st July 2025 is without merit and is hereby dismissed.
20. Costs of this application shall be awarded to the Applicant/Respondent.

RULING delivered virtually, dated and signed at **NAIROBI**

This **12th** day of **March** 2026.

P.M. MULWA
JUDGE

In the presence of:

N/A for Applicant/Respondent

Ms. Ogola h/b for Mr. Marete for Respondent/Applicant

Court Assistant: *Carlos*