



REPUBLIC OF KENYA



KENYA LAW

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**Structural Construction Int Ltd v Prabhaki Developers
Limited & another (Miscellaneous Application E331 of 2021)
[2026] KEHC 4840 (KLR) (Commercial & Admiralty) (9 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4840 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND ADMIRALTY
MISCELLANEOUS APPLICATION E331 OF 2021**

MA OTIENO, J

APRIL 9, 2026

BETWEEN

STRUCTURAL CONSTRUCTION INT LTD DECREE HOLDER

AND

PRABHAKI DEVELOPERS LIMITED JUDGMENT DEBTOR

AND

MAJITECH LIMITED & 13 OTHERS OBJECTOR

RULING

1. Before the Court is the Judgment Debtor/Applicant's Notice of Motion dated 7 November 2025 brought under Order 45 Rule 1, Sections 1A, 1B, 3A of the [Civil Procedure Act](#) and Article 50(1) of [the Constitution](#).

The Applicant seeks:

- i. Review and setting aside of the portion of this Court's ruling delivered on 21 October 2025 directing the Applicant's directors, Mr. Atul Bhagwanji Shah and Mr. Pradipkumar Bhagwanji Shah, to attend Court for oral examination and produce the company's books of accounts under Order 22 Rule 35;
 - ii. A finding that the said orders were issued in error;
 - iii. Costs of the Application.
2. The Application is supported by the Supporting Affidavit of Pradipkumar Bhagwanji Shah sworn on 7 November 2025.



3. The Applicant argues that there is an error apparent on the face of the record, contending that the Court erroneously allowed application for cross-examination of directors on issues already conclusively determined by Hon. Prof. Justice Sifuna in a ruling dated 3rd October 2024, thereby offending the doctrine of res judicata.
4. The Applicant further asserts that the ruling of 21 October 2025 contains a logical inconsistency. According to the Applicant, although the Court found no evidence of fraud or diversion of assets (at paragraph 38), it nonetheless compelled the directors to be examined on those very allegations.
5. The Applicant also avers that the impugned order compels the disclosure of confidential records and risks exposing the directors to potential self-incrimination without an adequate evidentiary basis.
6. The Decree Holder/Respondent, Structural Construction Int Ltd, opposed the application through Grounds of Opposition dated 17th March 2026, characterising the Application as a disguised appeal and an abuse of the court process intended to delay satisfaction of a substantial decretal sum of Kshs. 118,735,724.28, plus interest and costs.
7. The Respondent maintains that no inconsistency exists in the ruling, arguing that the Court's refusal to pierce the corporate veil at an interlocutory stage does not preclude an examination of means under Order 22 Rule 35, which serves a different purpose.
8. The Respondent further submitted that the issue of res judicata was squarely addressed in the impugned ruling, wherein the Court held that the issues before it were distinct from those handled by Sifuna J.
9. The application proceeded by way of written submissions. The Respondent filed their submissions dated 17 March 2026. The Applicant did not file any submissions.

Analysis and Determination

10. The Court's jurisdiction of this Court to review its own orders is circumscribed under Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules.
11. Section 80 empowers a party aggrieved by a decree or order from which an appeal is allowed by the Act, but which no appeal has been preferred, to apply for a review to the court which passed the decree or made the order.
12. Order 45 Rule 1 sets out the specific grounds upon which such a review may be granted, namely: discovery of new and important matter or evidence which, after exercise of due diligence, was not within the applicant's knowledge; Mistake or error apparent on the face of the record; and any other sufficient reason.
13. The jurisprudence on review is now settled. In *National Bank of Kenya Ltd v Ndungu Njau* [1997] eKLR, the Court affirmed that a review is available only where an error is self-evident and does not require elaborate argument, and that a review is not a substitute for an appeal, nor can it be founded on a differing interpretation of the law. The Court clarified 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.”

14. Similarly, in *Nyamogo & Nyamogo v Kogo* [2001] EA 170, the Court held that an error apparent on the face of the record must be one that is immediately evident without deep analysis. A mere erroneous decision does not qualify as such an error; it may only found an appeal, not a review.
15. Applying this jurisprudence to the present case, the Court is of the respectful view that the Applicant’s grievances regarding the Court’s interpretation of fraud and the corporate veil do not meet the threshold for review under Order 45, as they require the very detailed examination, an undertaking that the Court of Appeal warned against in *Nyamogo*.
16. The Applicant asserts that the Court contradicted itself by declining to find fraud yet ordering the directors’ examination. This submission demonstrates a misunderstanding of the dual nature of the Decree Holder’s prior application.
17. The Applicant contends the Court contradicted itself on the basis that while the Court found no evidence of fraud at paragraph 38 of the ruling, it still proceeded to order an oral examination of the directors. With respect, this argument demonstrates a misunderstanding of the dual nature of the Decree Holder’s application, which was the subject of the impugned ruling.
18. The Decree Holder’s application had sought the following two distinct remedies;
 - i. Lifting of the corporate veil
 - ii. Examination of the directors under Order 22 Rule 35.
19. The Court’s finding that there was insufficient evidence at that stage to justify piercing the corporate veil is a separate legal determination from the exercise of its power to order an examination of means.
20. Under Order 22 Rule 35 of the Civil Procedure Rules, the Court is clearly empowered to summon officers of a corporation for examination as to the Judgment Debtor’s means. In *Masefield Trading (K) Ltd v Rushmore Company Limited & Another* [2016] eKLR, the Court affirmed that such examination is an appropriate mechanism to establish whether the corporate veil should eventually be lifted. Indeed, at paragraph 38 of the impugned ruling, this Court explicitly stated:

“Mere allegations that the Judgment Debtor has not satisfied the decree, without more, do not justify the lifting of the corporate veil. This can only be determined where the results of the directors’ examination necessitate action.”
21. Accordingly, the Court finds no inconsistency or error apparent on the face of the record. Contrary to the Judgment Debtor’s assertions, the ruling of 21 October 2025 is internally coherent and legally sound.
22. The Notice of Motion dated 7th November 2025 is therefore dismissed.
23. The orders issued on 21st October 2025 directing the directors of the Judgment Debtor to attend court for oral examination and to produce the company’s books of accounts, remain in force.
24. The costs of the application are awarded to the Decree Holder/Respondent.
25. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF APRIL 2026

HON. MR. JUSTICE MOSES ADOJUDGE OF THE HIGH COURT



In the presence of: -

C/A – Moses

Ms. Kamau h/b Swaka..... for the Applicants

Ms. Joy Anami.....for the Decree Holder

