



REPUBLIC OF KENYA



Rudufu Limited v Mwangi t/a Kenya Shield Auctioneers & another (Miscellaneous Application 705 of 2025) [2026] KEHC 5766 (KLR) (Commercial and Tax) (23 April 2026) (Ruling)

Neutral citation: [2026] KEHC 5766 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION 705 OF 2025**

MA OTIENO, J

APRIL 23, 2026

BETWEEN

RUDUFU LIMITED APPLICANT

AND

**DENNIS K. MWANGI T/A KENYA SHIELD AUCTIONEERS 1ST
RESPONDENT**

**BUSINESS PARTNERS INTERNATIONAL KENYA (II) LIMITED 2ND
RESPONDENT**

RULING

Introduction

1. Before the Court is the Applicant's Notice of Motion dated 22nd October 2025 seeking, inter alia, orders for stay, review, and/or setting aside of the ruling and consequential orders issued on 11th September 2025, and an order that the Respondents' application dated 26th June 2025 be heard inter partes.
2. The application is supported by the affidavit sworn on the same date by Simon Ngingi Kimani, and predicated upon the grounds on its face.
3. The impugned ruling granted the Respondents, pursuant to Rule 9 of the Auctioneers Rules, 1997, orders for access, breaking-in, and police assistance to enable execution following an auction conducted in exercise of statutory power of sale. The orders were granted after the Court was satisfied that service had been effected and there was no response by the Applicant.
4. The application is supported by the affidavit sworn on the same date by Simon Ngingi Kimani, and is predicated upon the grounds on its face, and the submissions of the Applicant.



5. The Applicant's case is that they were not served with the application dated 26th June 2025 and were therefore condemned unheard, contrary to Articles 47 and 50(1) of *the Constitution*.
6. It was deponed that the Respondents misrepresented the amount due, claiming Kshs. 167,426,883.63 contrary to a Consent Judgment recorded on 25th September 2024 in HCCOMM No. 97 of 2019 for Kshs. 85,000,000.
7. The Applicant contended that the impugned orders were therefore obtained through misrepresentation and non-disclosure of material facts, warranting review or setting aside.
8. The Respondents opposed the Application through the Replying Affidavit of Jenipher Wanjiku Odek, sworn on 28th October 2025, and the Respondents' written submissions
9. The Respondents' case is that the Applicant was duly served with the application of 26th June 2025 via its official email address info@rudufu.co.ke, and the issue of service was conclusively determined in the ruling of 11th September 2025.
10. The Respondents asserted that the application was properly brought under Rule 9(2) of the Auctioneers Rules, which expressly permits such applications to be heard ex parte.
11. It was maintained by the Respondents that there was no misrepresentation as the sum of Kshs. 167,426,883.63 represents the principal amount under the consent plus accrued contractual interest and costs, as demonstrated in the statements of account annexed to the Replying Affidavit.
12. The Respondents therefore asserted that the Applicant has not demonstrated any of the grounds for review nor established a basis for the discretionary relief of stay, and in any event approaches equity with unclean hands.
13. The Application was canvassed by way of written submissions. The Applicant filed submissions dated 10th November 2025, whilst the Respondent's submissions are dated 19th November 2025.

Analysis and Determination

14. Having considered the Motion, affidavits, and rival submissions, the Court finds that the primary issue for determination is whether the Applicant has met the threshold for review, setting aside, or stay.
15. The Applicants contended that they were not served with the Application dated 26 June 2025. However, I note from the record that the Court, in the ruling delivered on 11th September 2025, expressly found that the Applicant had been served but failed to respond. That finding was central to the issuance of the impugned orders.
16. A review application cannot be used as an appeal in disguise. The Applicant has not presented new and compelling evidence, unavailable at the time, to dislodge that factual finding. While the Applicant alleged that their official email is francis@rudufu.co.ke, the Court finds the argument unpalatable. In fact, the Applicant did not dispute that info@rudufu.co.ke, is one of their email addresses. In any event, as opposed to the former, the latter e-mail address appears to be more of an official corporate email address than the former.
17. Service through a company's official and publicly available email address accords with modern commercial practice, and failure to monitor such correspondence is not a ground for impeaching court orders.



18. In any event, applications under Rule 9(2) of the Auctioneers Rules may be heard ex parte, a legislative recognition of the urgent and potentially volatile nature of execution where obstruction or breach of peace is anticipated.
19. The Court in *Odongo Investment Auctioneers v Gusii Water & Sanitation Company Ltd* (Miscellaneous Application E27 of 2021) [2024] KEHC 1970 (KLR) (21 February 2024) (Ruling), upheld the ex-parte nature of such applications, stating that;

“An application under paragraph (2) shall be by motion by way of a miscellaneous application supported by an affidavit in a competent court, and in the case of distress for rent, repossession and attachment, may be heard ex parte.”
20. Accordingly, the assertion of violation of the right to be heard is not borne out by the record.
21. On the alleged misrepresentation, the Applicant argued that the Respondents misrepresented the amount due, claiming Kshs. 167,426,883.63 contrary to a Consent Judgment recorded on 25th September 2024 in HCCOMM No. 97 of 2019 for Kshs. 85,000,000.
22. This argument is misconceived. A consent judgment settles the principal liability as agreed. It does not, absent express terms, extinguish contractual provisions on interest arising from default. The Respondents have exhibited statements of account demonstrating how the outstanding figure accrued. These statements were not controverted by the Applicant.
23. More fundamentally, the application dated 26th June 2025 did not seek a determination of the debt quantum. The orders granted related solely to access, breaking in, and police assistance to facilitate execution. Whether the outstanding amount stood at Kshs. 85,000,000/= or Kshs. 167,426,883.63 had no bearing on the necessity of such orders.
24. The Court therefore finds no misrepresentation or non-disclosure capable of vitiating the impugned orders.
25. A Review as designed under Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules is a narrow remedy. The Applicant must demonstrate discovery of new and important matter, an error apparent on the face of the record, or other sufficient reason. None has been established in the present case.
26. In *Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya* [2019] KEHC 6379 (KLR), the Court (JM Mativo – as he then was), while dealing with the question, stated as follows;

“The power of review is available only when there is an error apparent 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.”
27. In the present case, there is no ground established to warrant review under the narrow statutory provisions. The Applicant’s grievances relate to matters already considered or which ought to have been raised at the time of the initial application. Equity does not aid the indolent.
28. As regards stay, the Court must balance the competing rights of the parties. The Respondents hold a valid Consent Judgment and Decree, whose enjoyment has been delayed by default and obstruction.



The Applicant does not deny the debt. Granting stay would only perpetuate that default and deprive the Decree Holder of the fruits of judgment.

29. In these circumstances, the balance of convenience overwhelmingly favours maintaining the impugned orders. Accordingly:
- i. The Application dated 22nd October 2025 is dismissed in its entirety.
 - ii. The ruling and orders delivered on 11th September 2025 remain undisturbed.
 - iii. Costs of the Application are awarded to the Respondents.

30. It is so ordered.

DATED, SIGNED, AND DELIVERED AT NAIROBI THIS 23RD DAY OF APRIL 2026

HON. MR. JUSTICE MOSES ADO

JUDGE OF THE HIGH COURT

In the presence of: -

C/A – Moses

..... for the Applicant

..... for the Respondent

