



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

MISCELLANEOUS CIVIL APPLICATION NO. E263 OF 2025

JOSEPH KIPLAGAT SAMSON.....APPLICANT

VERSUS

**DALARO LOGISTIC LTD.....1ST
RESPONDENT**

**DANIEL NJOROGE.....2ND
RESPONDENT**

RULING

1. The Respondents' application dated 12th August 2025 was placed before this Court seeking, stay of execution of the judgment delivered in **Molo CMCC No. E400 of 2024** and for the Court to enlarge the time within which to file the intended appeal.
2. Upon consideration, this Court found no merit in the application and in the decision of 1st October, 2025 accordingly dismissed the same. However, the Court then proceeded to exercise its discretion to grant *inter alia* conditional stay orders and allowed the Respondents 60 days within which to file their appeal.
3. It is those orders that have given rise to the instant Application dated 12th November, 2025 brought pursuant to **Order 45 Rule 1** of the

Civil Procedure Rules, Section 80, 3A and 9A of the **Civil Procedure Act** which seeks the following prayers:

- i) That this Honourable Court be pleased to review the Ruling delivered 1st October 2025.**
 - ii) That upon review the Honourable Court be pleased to vacate the orders of conditional stay issued therein.**
 - iii) That the costs of this Application be provided for.**
4. The Application is premised on the Supporting Affidavit of **Caroline Chelangat** advocate. She deposes that this Court in the ruling of 1st October, 2025 dismissed the Respondents' application dated 12th August, 2025. That after dismissing the application, this Court *inter alia* allowed the Applicant to file the appeal within 60 days and pay the Respondent 50% of the decretal amount.
5. She argued that the effect of the said orders is contradictory and confusing as the application was dismissed for want of merit and therefore cannot attract conditional stay as granted. That the orders contradiction amounts to an error apparent on the face of the record, warranting review.
6. That the Court has inherent jurisdiction and power to review the judgment that was delivered on the 1st October, 2025. That the Respondents will not suffer any substantial loss or irreparable damage if the Application is allowed and the error be rectified to reflect the correct order.

7. The Application was heard by way of written submissions. The Respondents response and submissions are not on record.

Applicant's Submissions.

8. In the submissions dated 23rd March, 2026, reliance is placed in ***Abdalla & 6 others v Khansa Developers Limited & 3 others [2024] KEELC 3667 (KLR)*** to submit that the inconsistency is self-evident, does not require elaborate argument and it goes to the core of the ruling. As to what constitutes an error apparent on the face of the record, the Applicant relied on the case of ***National Bank of Kenya Limited Vs Ndungu Njau [1997] KECA 389 (KLR)***.
9. It was argued that the contradiction constitutes an error apparent on the face of the record because the orders are mutually exclusive the Court cannot both decline and grant relief simultaneously.

Analysis and Determination

10. I have considered the Application and according to the Applicant, the orders were contradictory as the Court cannot decline reliefs and allow the reliefs simultaneously.
11. The Application proceeds unopposed. The Affidavit of Service on record, sworn on 28th January 2026 by **Valentine Jaeptanui**, confirms that the hearing notice was duly served on the Respondents' advocate on the same day through the firm's official email address info@nnkeiadvocates.co.ke. Furthermore, the Application was accessible and visible on the CTS platform.

12. The issues therefore for determination are: -
 - a) **Whether the orders issued on 1st October, 2025 were contradictory.**
 - b) **The Application meets the legal threshold for grant of orders for review.**
 - c) **Costs.**

13. Regarding the first issue, the Respondents' application dated 12th August 2025 was found to be without merit. Ordinarily, when an application is found to be without merit, the reliefs sought therein fail. However, Courts possess the inherent power to override this consequence particularly to serve the interests of justice and uphold constitutional principles.

14. The instances where Courts in pursuit of justice exercise its judicial discretion are guided not by rigid rules but by principles of justice, fairness and equity and depending on the prevailing circumstance grant limited or conditional reliefs.

15. In ***Kenya Commercial Bank Ltd v Jonathan Ndolo Mulwa; Pamela Joy t/a Sadique Enterprises Auctioneers [2021] KEHC 5825 (KLR)*** the Court although found that the Applicants had not satisfied the threshold for grant of stay of execution, proceeded to grant leave for appeal. Further in order not to render the intended appeal illusory while at the same time securing the interests of the successful plaintiff granted conditional stay.

16. **Section 1A (1)** and **Section 1B (a)** of the **Civil Procedure Act** enjoin this Court to ensure the just determination of proceedings, the efficient disposal of business and the proportionate use of judicial resources. Further, **Section 3A** of the **Civil Procedure Act** preserves the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.
17. In the present case, the Court was of the view that the Applicant was not entitled to succeed but should have the chance to appeal. The Court further deemed it just and equitable to grant conditional stay orders while allowing the Applicant to enjoy a percentage of the decretal amount. This ensures that the Respondents' right of appeal is preserved while the decree holder receives partial satisfaction of the judgment without causing the Respondents unnecessary hardship.
18. Such discretion is not automatic but is grounded in the facts on record and the prevailing circumstances. The Court emphasizes that this approach should not be construed as a blanket principle for all applications.
19. It is therefore not unusual for a Court to make a finding that an application is without merit yet still grant limited reliefs. The adverse finding speaks to the insufficiency of the grounds advanced by the applicant and the limited relief is to balance the competing rights.

20. Pertaining the second issue, the Court has carefully considered the Application in light of the principles governing review under **Order 45 Rule 1(1)** of the **Civil Procedure Rules**. Review is only available where there is discovery of new and important matter or evidence, mistake or error apparent on the face of the record, or any other sufficient reason.

21. In *Nakuru Industries Limited vs Sirbrook (K) Limited* [2017] KECA (KLR)

“The appellant did not bring itself within the parameters set out in Order 45 Rule 1(1) in as much as it did not allege discovery of new and important matter or evidence or mistake or error apparent on the face of the record, or any other sufficient reason. What the appellant put forward as the basis for the review was scathing criticism of the learned Judge's ruling. Such criticism is not provided for in the rules for review. A litigant who is aggrieved by a decision of the court where appeal is allowed can and is entitled to challenge the decision on appeal in the next higher court. A litigant who has a right of appeal but has not appealed or who has no right of appeal but who desires to seek review of the order or decree with which he is aggrieved must bring himself within the parameters of rule 1(1) of Order 45. In the instant case, the matters stated by the appellant as the basis of the review sought before the learned Judge fell outside the ambit of rule 1(1) (supra). They also could not constitute “any other sufficient

reason” as they were clearly grievances appertaining to alleged errors by the learned Judge in his decision. That is the stuff expected in an appeal and not in a review. It would be awkward for a judicial officer to be required to sit and listen to submissions and arguments as to why his decision is wrong or erroneous. That would be tantamount to asking the court to sit on appeal on its own decision. That is precisely what the appellant did in this case. He unleashed a criticism of the court orders”

22. Having found that there was no error apparent on the face of the record or ambiguity in the ruling of 1st October 2025, the Applicant has also not demonstrated discovery of new evidence, mistake or sufficient reason to justify interference with the Court’s earlier decision. Prayer No. 2 subsequently fails.
23. The upshot of the foregoing is that the Application dated 12th November, 2025 is without merit and is accordingly dismissed.
24. Since the Respondent did not defend the Application, there shall be no orders as to costs.

It is So Ordered.

Signed, Delivered Virtually on Teams platform

On this 28th day of April, 2026

Mohochi S.M

JUDGE