



**Onguru t/a Ochanda Onguru & Co Advocates v Nairobi City
County Government (Miscellaneous Application E027 of 2024)
[2026] KEHC 6097 (KLR) (Commercial and Tax) (6 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 6097 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E027 OF 2024**

BK NJOROGE, J

MAY 6, 2026

BETWEEN

**WILLIAM OCHANDA ONGURU T/A OCHANDA ONGURU & CO
ADVOCATES APPLICANT**

AND

NAIROBI CITY COUNTY GOVERNMENT RESPONDENT

RULING

1. This is a Ruling in respect of an Application by the Applicant seeking a Review of the Court's previous Orders made on 27th February, 2025.

Background Facts

2. The Applicant filed the Notice of Motion dated 4th March, 2025 and sought the following orders;
 - a. The Court to review and set aside it's Ruling of 27th February 2025
 - b. Upon review and setting aside the said Ruling, the Court do grant the prayers sought in Chamber Summons application dated 23rd August 2024.
 - c. Costs of this application be provided for.
3. The Application was supported by the grounds on the face of it and by the Affidavit of William Ochanda Onguru. He deponed that there are sufficient grounds for review based on an apparent error on the face of the record. This is because in the Riling the Court incorrectly stated the consent amount as Kshs. 11,729,979/= instead of the correct sum of Kshs. 311,429,979/= as reflected in the duly executed consent dated 7th June 2023 and the decree issued on 28th July 2023. It is therefore argued



that, in the interest of substantive justice and to avoid prejudice, the Court should correct this error and grant the orders sought.

4. In response, the Respondent filed Grounds of Opposition dated 12th March 2025 on the following grounds;
 - a. The application is bad in law and incurably defective and ought to be struck out
 - b. The taxing master applied correct principles in arriving at the figure that was awarded.
 - c. The application does not disclose a cause of action.
 - d. The application has been preferred in bad faith and is otherwise an abuse of the Court process.

Issues for determination

5. The Court has carefully considered the Application, the Grounds of Opposition as well as the Applicant's submissions and the issue for determination is;

a) Whether the Application for review is merited.

Analysis

6. It was the Applicant's submissions that the Ruling dated 27th February 2025 which purports that the ascertained figure in the Consent date 7th June 2023, was Kshs.11,729,979/- is not factual as the figure therein in the said Consent is Kshs.311,429,979/-. This indeed amounts to an error apparent on the face of the record which is so glaring thus warranting a review in the interest of substantive justice so that the Applicant herein does not continue to suffer prejudice.
7. The power of review, while discretionary, is circumscribed under Section 80 of the *Civil Procedure Act* and Order 45 rule 1 of the Civil Procedure Rules. The Court may review its decision, inter alia: - on account of discovery of new and important evidence or some mistake or error apparent on the face of the record, or for any other sufficient reason.
8. Section 80 of the *Civil Procedure Act* Cap 21 provides as follows: -
 - “ Any person who considers himself aggrieved—
 - a. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
 - b. by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”
9. Further, Order 45 Rule 1 of the Civil Procedure Rules, provides as follows: -
 - “ 1. Any person considering himself aggrieved—
 - a. by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 - b. by a decree or order from which no appeal is hereby allowed, 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 without unreasonable delay.”

10. In *National Bank of Kenya Limited v Ndungu Njau* (Civil Appeal No. 211 of 1996) [1997] eKLR, the Court of Appeal stated 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.”

11. The Court has perused the consent which formed the basis for the calculation of the instruction fees. The Court confirms that the Consent by the parties dated 7th June 2023 and filed in Court indicates the amount as Kshs 311,429,979/- and NOT Kshs. 11,729,979/- as captured by the Taxing Officer and subsequently in the Ruling. It would follow that the Taxing Officer fell into error when it made reference to a consented figure of Kshs. 11,729,979/- and not to the correct and actual figure of Kshs. 311,429,979/-. The Consent dated 7th June, 2023 is part of the record of this Court and cannot be ignored. That the Taxing officer referred to an erroneous or incorrect figure is so glaring and cannot be wished away, explained or ignored. This consented figure is the same one that was used as the value subject matter for purposes of taxation. This error was thus perpetuated through the taxation.

12. In light of the above, the Application is allowed and the Court reviews the Ruling of 27th February 2025 to capture the consented amount as Kshs. 311,429,979/-. Subsequently, the Bill of Costs dated 12th January 2024 be taxed afresh by another Taxing Officer. As is usual, the Taxing Officer will exercise her discretion in taxing the said Bill of Costs, as a Taxing Master.

13. As to costs, seeing that the error did not emanate from the Respondent, the fair and just order is that there be no orders as to costs.

Determination

14. The Applicant’s application by way of a Notice of Motion dated 4th March, 2025 is allowed in the following terms;

- a. That the Court hereby reviews and sets aside its Ruling of 27th February, 2025.
- b. That the Court hereby grants the prayers sought in Chamber Summons application dated 23rd August 2024. This is to the effect that the Court hereby orders that the Applicant’s Bill of costs dated 12th January 2024 be taxed afresh by another Taxing Master, other than the one who previously taxed it.
- c. That there be no orders as to costs.

15. It is so ordered.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 06TH DAY OF MAY, 2026.

NJOROGE BENJAMIN K.

JUDGE

In the presence of;



Mr. Ochanda for the Applicant.

N/A for the Respondent.

Mr. John Paul - Court Assistant.

