



REPUBLIC OF KENYA



**Ram Equity Limited v Mayfair CIB Bank Limited & 3 others (Environment & Land
Case E107 of 2023) [2024] KEELC 6380 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6380 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E107 OF 2023
LN MBUGUA, J
SEPTEMBER 26, 2024**

BETWEEN

RAM EQUITY LIMITED PLAINTIFF

AND

MAYFAIR CIB BANK LIMITED 1ST DEFENDANT

GARAM INVESTMENTS LIMITED 2ND DEFENDANT

CHIEF LAND REGISTRAR 3RD DEFENDANT

DIRECTOR OF SURVEYS 4TH DEFENDANT

RULING

1. Before me is the 1st Defendant's application dated 6.5.2024 seeking to review/vary and or set aside this court's orders of 30.4.2024, that parties be allowed to record a consent in the matter or set the suit down for hearing as well as orders that costs be provided for.
2. The application is premised on grounds on its face and on the supporting affidavit sworn on 6.5.2024 by Maureen Kahiro, an assistant manager in the 1st Defendant's credit department. She avers that parties were in negotiations to settle the substantive matters in the suit but by a ruling dated 30.4.2024, in what appears to be an error on the face of the record, the Court, appears to have jumped the gun and granted the Plaintiff costs and interest of the suit without a consent having been filed setting out the terms of settlement of the substance of the suit.
3. The application is opposed by the Plaintiff vide the replying affidavit sworn on 7.6.2024 by Bhavin Gudka, a director of the Plaintiff. He avers that on 21.9.2023, this court directed the 1st Defendant to deposit ksh.8.6 million in a joint interest earning account in the name of the parties' advocates and varied the orders on 30.10.2021 by instructing that the money be deposited in court within 14 days.



4. That the 1st Defendant failed to deposit the money and on 18.1.2024, it wrote to the Plaintiff's advocates on record with a proposal to settle the amount out of court on the terms that the 1st Defendant would refund the deposit and each party would bear its own costs.
5. That the Plaintiff's advocates in a letter dated 19.1.2024 made a counter proposal agreeing to the refund but demanded interest at bank rates and costs amounting to ksh.1.5 million.
6. That the parties appeared before the court on 12.2.2024 and informed the court they were agreeable on the issue of refund of the deposit but could not agree on interest and costs, thus the court directed them to file submissions on the said issues culminating in the ruling delivered on 30.4.2024 awarding the Plaintiff interest and costs.
7. He contends that there is no error on the face of the record, adding that the 1st Defendant is only intent on avoiding its obligations.
8. I have considered the arguments raised herein as well as the submissions of the 1st defendant dated 18.7.2024 (the plaintiff did not file submissions). The 1st Defendant argues that in a clear and manifest error, the court has proceeded to awarded interest and cost to the Plaintiff before it could determine the substantive issue of ksh.8.6 million.
9. This court has power to review its own decision as long as it is exercised within the framework of Section 80 of the *Civil Procedure Act* and Order 45 Rule (1) of the *Civil Procedure Rules*. In the instant case, the 1st defendant has based his ground for review on "mistake or error apparent on the face of the record".
10. In the Court of Appeal case of *National Bank of Kenya Ltd v Ndungu Njau* Nairobi CA No. 211 of 1996 it was held that;

"A review may be granted whenever the courts consider that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evidence and should not require a deliberate argument to be established".
11. The ruling on costs dated 30.4.2024 was delivered " following the parties agreement settling the suit by consent". The said consent was however not filed in the Court's Case Tracking System (CTS). The contents of paragraph 12 of the plaintiff's affidavit state that parties had informed the court on 12.2.2024 that " parties were able to agree on the issue of refund".
12. A perusal of the records of 12.2.2024 indicate that counsel for the plaintiff had addressed the court as follows; "We are unable to agree on issue of costs" of which counsel for the defendant responded that "we can have time allocation". Thus the court gave directions for parties to file submissions on the question of costs.
13. It is clear that the consent settling the suit was not recorded. It follows that there is certainly a mistake and error apparent on the face of the record which warrants the issuance of the orders sought. In the circumstances, I find that the application dated 6.5.2024 has merits, thus the orders of 30.4.2024 are hereby set aside. The parties are at liberty to record the consent in respect of the substantive issues raised in the pleadings or the matter can proceed to trial. Each party is however to bear their own costs of the current application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF SEPTEMBER, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA



JUDGE

In the presence of:-

M/s Wanjau holding brief for Hassan for Plaintiff

Ababa for 1st for 2nd Defendants

M/s Ndundu for 3rd for 4th Defendants

Court assistant: Joan

