



Africa Merchant Assurance Co. Limited v Njuguna (Civil Miscellaneous E930 of 2024) [2025] KEHC 4750 (KLR) (Civ) (27 March 2025) (Ruling)

Neutral citation: [2025] KEHC 4750 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL MISCELLANEOUS E930 OF 2024**

TW CHERERE, J

MARCH 27, 2025

BETWEEN

AFRICA MERCHANT ASSURANCE CO. LIMITED APPLICANT

AND

PETER GAKUNGA NJUGUNA RESPONDENT

RULING

1. The matter before the court is the Applicant's Notice of Motion dated 3rd March 2025, brought pursuant to Sections 1A and 3A of the *Civil Procedure Act*, and Order 45 Rule 1 and Order 51 of the Civil Procedure Rules, seeking review of the ruling delivered on 27th February 2025, particularly the order directing payment of KES 3,000,000 to the Respondent as a condition for stay of execution.
2. The application is supported by the affidavit of Nicklus Okero sworn on even date and is premised on the ground that the Plaintiff in the primary suit, Milimani CMCC No. 5335 of 2013, is Grace Wambui Kiruri and not the Respondent herein, and that the sum of KES 3,000,000 ought to be paid to the Interested Party.
3. Grace Wambui Kiruri, the Interested Party and Plaintiff in the primary suit, supports the application through her replying affidavit sworn on 19th March 2025. She states that the cause of action by the Respondent against the Applicant arose from the judgment delivered in her favour in the primary suit. She further contends that the Respondent will not suffer any prejudice if the sum of KES 3,000,000 is released to her.
4. The Respondent opposed the application through a replying affidavit sworn on 12th March 2025 arguing that the payment of KES 3,000,000 to the Interested Party would expose him to execution for the balance of the decretal sum and thereby cause him prejudice.



Issues for Determination

5. From the affidavit evidence on record, the following issues arise for determination(1) Whether the Applicant has met the threshold for review under Order 45 Rule 1
(2) Whether the funds deposited should be released to the Interested Party

Analysis and Determination

6. The Applicant seeks a review on the basis of an error apparent on the face of the record namely, that the party named as the Respondent was not the Plaintiff in the primary suit from which the claim arose.
7. The jurisdiction of the court to review its own orders is governed by Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules. The grounds for review are limited to:
 - a. Discovery of new and important evidence that was not available at the time of the ruling despite due diligence;
 - b. A mistake or error apparent on the face of the record; or
 - c. Any other sufficient reason.
8. In *Nyamogo & Nyamogo Advocates v Kogo* [2001] 1 EA 173, the Court held that an error apparent on the face of the record must be self-evident and not require an elaborate argument to establish.
9. In the present case, the identity of the Plaintiff in the primary suit is a matter of court record. It is not in dispute that the Interested Party, Grace Wambui Kiruri, was the Plaintiff in MILIMANI CMCC No. 5335 of 2013. The judgment in MILIMANI CMCC E149 of 2022 arose from the enforcement of that earlier decree. Accordingly, the misidentification of the proper claimant in the ruling of 27th February 2025 amounts to an error apparent on the face of the record, warranting review.
10. On whether prejudice will be suffered if the sum is released to the Interested Party, this court previously ordered the Applicant to pay KES 3,000,000 to the Respondent as a condition for stay of execution. It has now been clarified and admitted by both the Applicant and the Interested Party (and not contested with evidence by the Respondent) that the said amount rightly belongs to the Interested Party, Grace Wambui Kiruri.
11. The principle of restitution and equity requires that money be released to the rightful claimant to avoid unjust enrichment. In *Chase International Investment Corporation and Another v Laxman Keshra and 3 others* [1978] KECA 7 (KLR), the Court of Appeal held that restitution will be granted where it would be unjust to allow a party to retain a benefit unjustly acquired.
12. In the circumstances, no prejudice has been demonstrated by the Respondent that would arise from releasing the funds to the Interested Party, particularly since the Applicant remains liable for the balance of the decretal sum, which the Interested Party, as decree-holder, is entitled to pursue.
13. In light of the foregoing, the Court finds merit in the notice of motion dated 03rd March 2025 and accordingly makes the following orders:
 1. The ruling delivered on 27th February 2025 is hereby reviewed to substitute the name of the Respondent in the order directing payment of KES 3,000,000 with the name of the Interested Party, Grace Wambui Kiruri
 2. The Applicant shall pay the said sum of KES 3,000,000 to the Interested Party within seven (7) days from today.



3. The other conditions of the ruling dated 27th February 2025 remain in force
4. Each party shall bear their costs of this application.

DELIVERED AT NAIROBI THIS 27th DAY OF MARCH 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Ubah

For Applicant - Ms. Mayiah for L.A.Chemeli LLP Advocates

For Respondent - Mrs. Kariuki for Njui Kariuki & Co. Advocates

For the Interested Party – N/A for Chiuri & Chiuri & Co.Advocates

