



**Xue v Molova & 3 others (Civil Appeal E1520 of 2024)
[2025] KEHC 12213 (KLR) (Civ) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 12213 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E1520 OF 2024

TW CHERERE, J

MAY 29, 2025

BETWEEN

WENLIANG XUE APPELLANT

AND

ALEX KIDAKE MOLOVA 1ST RESPONDENT

CAROLINE MUTHONI KARANJA 2ND RESPONDENT

KIDAKE FOUNDATION LIMITED 3RD RESPONDENT

MWANANCHI CREDIT LIMITED 4TH RESPONDENT

RULING

“A court speaks through its orders, and while justice allows for correction, it does not indulge dissatisfaction cloaked as review.”

Background

1. By a ruling dated 08th May 2025, this Court granted a temporary injunction restraining the Respondents from dealing with motor vehicle registration number KDN 888J and directed the 4th Respondent to release the vehicle to the Appellant under conditions safeguarding its preservation within the court’s jurisdiction. The Court further ordered the Appellant to present the vehicle to the Deputy Registrar monthly pending determination of the appeal.
2. The 4th Respondent, by Notice of Motion dated 09th May 2025, brought under Sections 1A, 1B, and 3A of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules, seeks review of the said orders, particularly the order directing release of the vehicle to the Appellant.



3. The application is supported by the affidavit sworn on 09th May 2025 by 4th Respondent's Legal Officer Saleh Jackline and on the grounds that:
 1. The Appellant is a foreign national and there is a real risk that he may alienate or remove the motor vehicle from the jurisdiction of the Court
 2. The motor vehicle was the sole security used as collateral for a loan advanced by the 4th Respondent to the 2nd Respondent
 3. The 4th Respondent, being a licensed microfinance institution, is best suited to retain custody of the vehicle
 4. There is new evidence showing that the motor vehicle has since been transferred to the name of the 3rd Respondent
 5. The application has been brought promptly and it is in the interest of justice that it be allowed.
4. The Appellant opposed the application through Grounds of Opposition dated 26th May 2025, stating that:
 1. That the application fails to meet the threshold for review under Order 45 rule 1
 2. That the Court had already considered and addressed the competing interests in the motor vehicle in its ruling of 08th May 2025;
 3. That the 4th Respondent's interest was recognised and preserved through conditional orders ensuring the vehicle remains within jurisdiction of the court and under judicial supervision.

Issues for Determination

5. I have carefully considered the notice of motion in light of the orders issued on 08th May 2025, the supporting affidavit and the grounds of opposition and the issues that arise for determination are as follows:
 1. Whether the application meets the threshold for review under Order 45 (1) of the Civil Procedure Rules;
 2. Whether it is in the interest of justice to interfere with the preservation orders previously issued.

Analysis and Determination

Whether the application meets the threshold for review

6. The substantive jurisdiction to review a judgment or order is conferred by Section 80 of the [Civil Procedure Act](#), which provides:

“Any person who considers himself aggrieved—

1. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred or
2. by a decree or order from which no appeal is allowed by this Act, 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.”

7. The procedure is outlined under Order 45 Rule 1 of the Civil Procedure Rules, which states:

“ Any person considering himself aggrieved by a decree or order... 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 on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, may apply for a review.”

8. In *National Bank of Kenya Ltd v Ndungu Njau* [1997] eKLR, the Court of Appeal explained:

“ A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission... The error or omission must be self-evident... It will not be a sufficient ground for review that another judge could have taken a different view...”

9. And in *Francis Origo & Another v Jacob Kumali Mungala* [2005] eKLR, the Court held:

“ An erroneous conclusion of law or evidence is not a ground for review but may be a good ground for appeal.”

10. In *Benjoh Amalgamated Ltd & Another v Kenya Commercial Bank Ltd* [2014] eKLR, citing *Niels Bruel -vs- Moses Wachira & 2 others* [2018] eKLR, the Court warned:

“ The jurisdiction is exceptional and has to be exercised sparingly and with circumspection to thwart disaffected parties who merely seek a second bite of the cherry...”

11. The present application is mainly grounded on what the 4th Respondent contends to be new evidence that has just come to its knowledge. The NTSA record presented in support of this proposition reveals that the subject motor vehicle was registered in the 3rd Respondent’s name on 15th September 2023.

12. In *Rose Kaiza v Angelo Mpanjuiza* [2009] eKLR the court quoted the commentary by Mulla of the Indian Civil Procedure Code, 15th Edition at page 2726, on the ground of discovery of new and important evidence and stated as follows:

“ It is not only the discovery of new and important evidence that entitles a party to apply for a review, but the discovery of any new and important matter which was not within the knowledge of the party when the decree was made.”

13. It is evident that the records now relied upon as new evidence pertain to a transaction that occurred nearly one year and eight months before the ruling delivered on 08th May 2025. This information was clearly available at the time and could have been obtained with reasonable diligence. It therefore does not qualify as new evidence. Moreover, it does not raise any issue capable of affecting the outcome of the Court’s earlier determination, which had already considered the competing claims and preserved the status quo by requiring the subject motor vehicle to remain within the Court’s jurisdiction.



Whether the interests of justice warrant review

14. In *Francis Origo & Another v Jacob Kumali Mungala* [2005] eKLR, the the Court explained that the purpose of interlocutory relief is

“to maintain the status quo and preserve the substratum of the appeal. The court must balance the competing rights of the parties.”
15. As previously stated, the preservation orders issued on 08th May 2025 were deliberately structured to protect the rights and interests of all parties. The ruling acknowledged the 4th Respondent’s interest and put in place comprehensive preservation measures, including restrictions on the vehicle’s movement and mandatory monthly reporting to the Deputy Registrar.
16. The present application, in both form and substance, amounts to an attempt to reopen and re-litigate issues that were fully argued and determined in the ruling of 08th May 2025. As emphatically stated by the Court of Appeal in *Kivanga Estates Ltd v National Bank of Kenya Ltd* [2017] eKLR, litigation must come to an end.
17. The review jurisdiction is not a mechanism for discontented litigants to mount a collateral challenge to a court’s decision. To permit such a course would undermine the principles of finality in litigation and judicial economy. A court cannot be invited to sit in appeal over its own decisions under the guise of a review. Where a party is dissatisfied with a ruling, the proper recourse lies in an appeal. With respect, the invocation of the review jurisdiction in the present circumstances is a clear abuse of process and cannot be sustained.
18. In the end, it is hereby ordered:
 1. The Notice of Motion dated 09th May 2025 has no merit and it is hereby dismissed.
 2. The orders issued on 08th May 2025 shall remain in force until otherwise set aside
 3. Appellant’s costs of this application shall be borne by the 4th Respondent

DELIVERED AT NAIROBI THIS 29TH DAY OF MAY 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Ruth

For Appellant - Mr. Githinji for Githinji Mwangi & Associates Advocates

For 1st to 3rd Respondents - N/A for Rashid Ngaira & Associates Advocates

For 4th Respondent - Mr. Kulewo for Bryan Khaemba, Kamau Kamau Advocates

