



**Omwanza Ombati t/a Nchogu, Omwanza & Nyasimi Advocates v Barasa (Commercial Case E380 of 2023) [2025] KEHC 12482 (KLR) (Commercial and Tax) (1 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12482 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E380 OF 2023  
JWW MONG'ARE, J  
SEPTEMBER 1, 2025**

**BETWEEN**

**OMWANZA OMBATI T/A NCHOGU, OMWANZA & NYASIMI  
ADVOCATES ..... PLAINTIFF**

**AND**

**HON DIDMUS WEKESA BARASA ..... DEFENDANT**

**RULING**

1. On 19<sup>th</sup> December 2024 this Honourable Court issued a ruling in the above matter allowing the application by the Plaintiff seeking entry of judgment against the Defendant for the sum of Kshs.4,000,000/=. Subsequently and upon the delivery of the said ruling, the Defendant/Applicant filed a Notice of Appeal pursuant to Rule 75 of the *Court of Appeal rules* under the *Appellate Jurisdiction Act*.
2. Simultaneously and upon filing the said Notice of Appeal, the Applicant moved this Honourable Court by a Notice of Motion Application under Article 50 & 159(2)(d) of the *Constitution* of Kenya, Sections 1A,1B &3A of the *Civil Procedure Act* and Order 45 Rule 1 and Order 51 Rule 1 of the *Civil Procedure Rules* seeking the following reliefs:-
  - a. Spent
  - b. Spent
  - c. That pending the hearing and determination of the suit, this Honourable Court be pleased to issue an order stopping the execution of the ruling and orders issued by this Honourable Lady Justice Mong'are on 6<sup>th</sup> December 2024.



- d. That pending the hearing and determination of this application, the Honourable Court be pleased to review and set aside the ruling and orders issued by the Honourable Lady Justice Mong'are on 6<sup>th</sup> December 2024.
  - e. That pending the hearing and determination of this application, the Honourable Court be pleased to review and set aside the ruling and orders issued by the Honourable Lady Justice Mongare on 6<sup>th</sup> December 2024.
  - f. That costs of this application be provided for.
3. The application is supported by the grounds set out on its face and the supporting affidavit of Didmus Wekesa Barasa Mutua sworn on 17<sup>th</sup> February 2025. The application is opposed and the Plaintiff filed its grounds of opposition dated 5<sup>th</sup> March 2025 and replying affidavit sworn by Omwanza Ombati on 12<sup>th</sup> June 2025. The court directed parties to file written submissions but as at the writing ruling only the Plaintiff/Respondent had filed his written submissions dated 12<sup>th</sup> June 2025. The Defendant/Applicant did not file any submissions to the application.
  4. The court notes that the present application seeks to have this court review its ruling of 6<sup>th</sup> December 2025. From the onset and pursuant to Order 45 Rule 1 an application for review is premised on very narrow grounds. That is for a court to review its own ruling, there must an error apparent on the face of the record or the party seeking to have the ruling reviewed must demonstrate to the court that there is discovery of new and material facts that were not within its knowledge at the time the ruling was made and had those facts been present, the court would have ruled differently.
  5. Order 45 Rule 1 of the [Civil Procedure Rules](#) provides as follows:-
 

“Order 45 – Review; 1. Application for review of decree or order [Order 45, rule 1]-

    - (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.
    - (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.”
  6. I have considered the application by the Defendant and the supporting affidavit by Hon. Didmus Wekesa Barasa and I have not seen any demonstration that the impugned ruling contains an error apparent on the face of the record nor has the deponent produced before this court new and important



facts that were not in his possession at the time of the hearing of the application from whence the ruling was derived. What I note from the supporting affidavit is an averment that he has good defence to the main suit that has raised triable issues and that by this ruling, the court has closed the case without affording him an opportunity to be heard or to put forth his defence to the suit.

7. As stated earlier, the grounds upon which this court can review its own ruling are as set out under order 45 of the *Civil Procedure Rules*. Where a party is dissatisfied with a decision of a court in any matter, the right procedure is to prefer an appeal to the appellate court and have the matter determined at that level. The Applicant has by his Notice of Appeal filed on 24<sup>th</sup> January 2025, indicated that he wishes to appeal the decision of 6<sup>th</sup> December 2024 to the Court of Appeal. The best place therefore to seek orders to stay the execution of this courts ruling is before the said court as the orders sought in the present application, if granted, will amount to this court sitting on appeal on its own decision.
8. In sum, the court is satisfied that the present application is without merit. The same is dismissed with costs awarded to the Plaintiff/Respondent. The said costs are assessed at Kshs.30,000/=. It is so ordered.

**DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 1<sup>ST</sup> DAY OF SEPTEMBER 2025**

**J.W.W. MONGARE**

**JUDGE**

In The Presence Of

Ms. Chelagat for the Plaintiff/Respondent.

N/A for the Defendant/Applicant.

Amos- Court Assistant

