Kenya Orient Insurance Company Limited v Otieno (Civil Appeal E166 of 2023) [2024] KEHC 16605 (KLR) (31 December 2024) (Ruling)

Neutral citation: [2024] KEHC 16605 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISUMU

CIVIL APPEAL E166 OF 2023

RE ABURILI, J

DECEMBER 31, 2024

BETWEEN

KENYA ORIENT INSURANCE COMPANY LIMITED ..... APPELLANT

AND

GEORGE OTIENO ..... RESPONDENT

RULING

AND

IN THE MATTER OF REVIEW, CLARIFICATION AND INTERPRETATION OF THE JUDGMENT DATED 25.06.2024

IN AN APPLICATION BY

MARTIN BUNDI KABUTITI..... APPLICANT

DIRECTLINE ASSURANCE COMPANY LIMITED ....RESPONDENT

(In Milimani Nairobi Small Claims Court Case No. E3443 of 2024)

1. On 25th June, 2024, this Court delivered judgment in this appeal arising from the Ruling of Hon G.C.Serem in Kisumu Small Claims Court Case No. E242 of 2023 delivered on 12th September, 2023.

2. The appeal arose from the ruling wherein the Adjudicator dismissed a preliminary objection raised by the Respondent before the Small Claims Court, challenging jurisdiction of the Small Claims Court to hear and determine a declaratory suit filed by the Claimant seeking to compel the Insurance Company to settle a decree issued by the Small Claims Court on behalf of the Insured Judgment debtor.

3. It then appears that the applicant herein who had a similar suit pending before Milimani Small Claims Court at Nairobi faced a similar predicament upon which the Adjudicator, relying on the decision

by this Court in this matter, allowing the appeal and striking out the declaratory suit on account of jurisdiction, proceeded to strike out the suit for want of jurisdiction.

4. The Claimant in the Nairobi Milimani Small Claims Court has now approached this Court seeking for review, clarification and interpretation of the judgment of this court rendered on 25th June 2024.

5. In the application dated 9th September, 2024, the applicant urges this Court to, in the interest of the public, give directions and clarify that the definition of a 'declaratory suit' given in the judgment of this court does not apply to suits based on insurance contracts under Cap 405 of laws of Kenya.

6. Secondly, that the inadvertent exemption baring the SCC from hearing and proceeding with cases of causes of action based on contracts founded on CAP 405 in the impugned judgment be removed.

7. Thirdly, that for avoidance of doubt, the Small Claims Courts be allowed to proceed with causes of action based on CAP 405 contracts as provided under section 12 irrespective of whether such contracts emanate from CAP 405.

8. Fourth, that this Court be pleased to clarify that the term 'declaratory suit be ' be deemed to apply to only suits that are declaratory in nature and not all suits relating to the execution, discharge and satisfaction of decrees by insurance companies.

9. That pending the hearing and determination of this application, the Small Claims Courts in Kenya be allowed to proceed with the hearing of cases and causes of action based on contracts founded on CAP 405.

10. That costs be in the cause.

11. The grounds upon which the application is predicated are 24 in number. I will reproduce a few of them here, which grounds are replicated in the supporting affidavit sworn by Mr. Martin Bundi Kibutiti the applicant herein.

12. In the said grounds as replicated in the sworn affidavit, the applicant deposes that he is the decree holder in the SCC Case No. Milimani SCC E5281/2023 and that he was aggrieved by the judgment of this court in this Appeal rendered on 25th June 2024. That in his suit, he was awarded general and special damages arising out of a road traffic accident all amounting to Kshs 1.007,850.00. that subsequently, he filed a declaratory suit vide SCC e3443/2024 against Directline Insurance Company Limited based on a third-party contract of insurance and as a beneficiary of that third party contract.

13. That the said suit was dismissed by the Adjudicator with leave to file a fresh suit at the appropriate court. That the said suit was dismissed following this court's judgment in this appeal wherein I held that the SCC has no jurisdiction to hear and determine declaratory suits in the matter before it, which dismissal, according to the applicant, was premised on the definition of a declaratory suit giving it a wider meaning to cover suits based on CAP 405 hence this court should review its judgment and distinguishes between declaratory suits and third-party beneficiary contracts founded on CAP 405.

14. That the said decision by this court has heavily impacted on the SCC jurisdiction to hear contractual matters based on CAP 405.

15. That the harm and manifest injustice caused by this decision in the SCC is monumental hence the decision of this court should be reviewed as it inadvertently turns back the clock on quantum leaps on the evolution of litigation that had been made by the administrators of justice system in Kenya.

16. According to the applicant, the court's definition of 'declaratory suit' in paragraph 23 of the impugned judgment sought to be reviewed makes no distinction whatsoever of contract suits by third party

beneficiaries which suits are recognized by our laws and fall squarely within section 12(a0 of the *Small Claims Court Act*.

17. That the failure of this Court to distinguish third party beneficiary contract suits from declaratory suits in the impugned judgment has resulted in the ousting from the seat of justice of immeasurable litigants who stood in line at the Small Claims Court awaiting fruition of the decrees arising from third party beneficiary contracts under CAP 405.

18. That the decision will lead to a jam and inordinate delays in matters pending before the Magistrate's Courts countrywide if the Small Claims Court is barred from hearing and determining such matters.

19. That this court had unlimited jurisdiction and has supervisory jurisdiction over subordinate courts hence it should ensure access to justice for all as espoused in *the Constitution*.

20. That given the doctrine of stare decisis, the Small Claims Courts countrywide are bound by the decision of this Court hence the need to review its decision to allows and that this application has been brought without undue delay.

21. The respondent who is the appellant and successful party in this case filed a replying affidavit sworn by Maureen Wangechi deposing and asserting as follows in opposition to the application and the prayers sought: that the application is an abuse of court process; that section 8((a) of the *Civil Procedure Act* has no application herein; that Articles 159 (1) and (2) (b) and (d) of *the Constitution* does not give the High Court jurisdiction to review or to sit on appeal of its own judgment; that the applicant is not a party to this appeal and has improperly joined himself to the appeal without leave; that Article 165(3) (a) an d(b) of *the Constitution* do not confer on this Court unlimited jurisdiction in appellate matters or supervisory jurisdiction over subordinate courts, persons, bodies or authorities exercising judicial or quasi-judicial authority, except as provided for by law; that the High Court has no jurisdiction to give directions and clarify its own judgment; the decision of this court made on 26/6/2024 is clear, unambiguous and straight forward and needs no ' directions and clarifications'; that suits to enforce judgments under section 10 of Cap 405 are declaratory suits and are not provided for under section 12 of the *Small Claims Court Act*; that the alleged manifest injustice is not a license for this court not to apply the law; that the power to review judgments does not fall outside of section 80 of the *Civil Procedure Act* and Order 45 of the Civil procedure Rules; that the right to access justice is not curtailed by the Court's decision or the provisions of section 12 of the *Small Claims Court Act*, which itself provides for the jurisdiction of the Court; that the applicant seeks to have this court sit on appeal of its own decision and that he is on a fishing expedition.

22. The parties filed written submissions to canvass the application.

The applicant's submissions

23. In his submissions, the applicant reiterated the grounds and supporting affidavit. According to the applicant, the crux of the striking out of the declaratory suit is found in the over-reaching definition of 'a declaratory suit' given under paragraph 23 of the impugned judgment which defines 'a declaratory suit as "... one that seeks to compel a judgement debtor's insurer to settle the decree passed against the insured. That the definition of 'declaratory suit' in paragraph 23 of the impugned decision makes no distinction whatsoever of contract suits by Third-Party Beneficiaries which suits are recognized by our laws, founded on contract law and fall squarely within section 12(1)(a) of The Small Claims Courts Act. That Third Party Beneficiary suits are common not only in Kenya but throughout the commonwealth countries with whom we share our jurisprudence. Counsel for the applicant gave examples where Third-Party Beneficiary of a contract may be instituted and listed several cases from other jurisdictions and I will reproduce herein below the cases as cited:

i. 2007 Ogunde v. Prison Health Servs., 274 Va. 55, 645 S.E.2d 520 Prisoner sued Prison Health Services on theory that he was an intended third-party beneficiary of the contract between this defendant and the prison. In fact, the contract expressly identifies the prisoners as being the ones who will be benefitted from the Health Services contract. It was error for the trial court to dismiss the third-party beneficiary claim on the grounds that the prison was simply an incidental beneficiary.

ii. 1998 M.N.C. Credit Corp. v. Sickels, 255 Va. 314, 497 S.E.2d 331 Plaintiff alleged that it was third-party beneficiary of contract for legal services between attorney and client. In order to proceed on third-party beneficiary contract party claiming benefit must show that parties to contract clearly and definitely intended to confer benefit upon him. Virginia Code § 55-22 has no application unless party against whom liability is asserted has assumed obligation for the benefit of third party. Without allegation that attorneys executed contract with client with intent of conferring direct benefit upon M.N.C. Credit then claim is properly demurrable.

iii. 1995 Levine v. Selective Ins. Co., 250 Va. 282, 462 S.E.2d 81 Plaintiff signed contract with Elmore for construction of home, and Elmore obtained insurance contract to provide coverage for loss of materials and personal injuries on jobsite. It was agreed that plaintiffs were beneficiaries of such policy. Carrier delayed in payment of claim. Plaintiff presented jury issue as to breach of contractual duty of good faith and fair dealing.

iv. 1995 Aetna Cas. & Sur. Co. v. Fireguard Corp., 249 Va. 209, 455 S.E.2d 229 Owner of project was deemed to be third-party beneficiary of the contract and owner's insurer was subrogated to such rights. Ambiguity existed in contract as to who actual owner was. Parol evidence should have been allowed as to that issue.

v. 1989 Cobert v. Home Owners Warranty Corp., 239 Va. 460, 391 S.E.2d 263 Homeowners' warranty insurance program. Insurance policy is actually issued to builder, but purchaser is intended beneficiary under contract.

vi. 1979 Richmond Shopping Center, Inc. v. Jackson Co., 220 Va. 135, 255 S.E.2d 518 Property owner sought recovery for property damage on theory that he was third-party beneficiary of contract between contractors and state. Only intended beneficiary may recover. Plaintiff was purely incidental beneficiary.

vii. 1977 Valley Landscape Co. v. Rolland, 218 Va. 257, 237 S.E.2d 120 In standard owner/architect contract, undertaking by architect is not designed to protect contractor, and any benefit to him is incidental.

viii. 1973 Sydnor & Hundley v. Wilson Trucking, 213 Va. 704, 194 S.E.2d 733 Suit for nondelivered of goods by carrier. Purchaser was third-party beneficiary entitled to bring suit. Nine-month notice requirement as to claims was reasonable.

ix. 1967 Richmond, F. & P.R.R. v. Hughes-Keegan, Inc., 207 Va. 765, 152 S.E.2d 28 Insurance policy intended to cover defendant's performance of its undertaking with railroad as set forth in indemnity clause. Railroad was thus third-party beneficiary under Va. Code § 55-22 and could sue insurance company on this theory. This, however, was not direct action on tort theory.

x. 1978 United Servs. v. Nationwide Mut., 218 Va. 861, 241 S.E.2d 784 Injured party is beneficiary under tortfeasor's liability policy from time of injury if vehicle was operated

with permission of insured owner. Injured person must reduce his claim to judgment before bringing action against tortfeasor's liability insurer.

xi. 1958 Ampy v. Metropolitan Cas. Ins. Co., 200 Va. 396, 105 S.E.2d 839 Judgment creditor who sues insurance company on third-party beneficiary theory has rights under policy that are no greater than those of insured. If policy cancelled then third party has no rights.

xii. 1947 Lumbermen's Mut. Cas. v. Indemnity Ins. Co., 186 Va. 204, 42 S.E.2d 298, in auto liability claim, if judgment is entered against insured and execution is returned unsatisfied, injured party may maintain independent action on policy.

24. I will also reproduce the Applicant's very useful submissions applying the above principles borrowed from other jurisdictions verbatim. It was submitted that locally CAP 405 section 10 provides for a direct cause of action – by a separate suit or proceedings - or a right to execute on the same decree by the judgement debtor of creditor, against the insurer and the last 3 cases (hyperlink provided in document) in bold are on all fours similar to the Applicant's claim against Directline.

25. Further, that the harm and manifest injustice caused by this decision in the Small Claims Courts is monumental and inadvertently turns back the clock on the quantum leaps on the evolution of litigation that had been made by the administrators of the justice system in Kenya.

26. That the definition of 'declaratory suit' in paragraph 23 of the impugned decision makes no distinction whatsoever between contract suits by Third-Party Beneficiaries which suits are recognized by our laws and fall squarely within section 12(1)(a) of The Small Claims Courts Act and the one hand and 'declaratory suits' on the other.

27. That by the eponymous title 'declaratory suit' such a suit is one that seeks declarations reliefs that on their own are normally unquantified.

28. That the Applicant's TPB suit did not seek any declaration whatsoever, was quantified as per the decree issued in the original suit, was based on the insurance policy issued under CAP 405 by Directline and was quantified and by no stretch of imagination can such a suit be categorized as a 'declaratory suit'.

29. That even though 'declaratory suit' is a general term used in Kenyan legal parlance to refer to claims for brought against insurance companies for decrees obtained in suits arising under CAP 405, the term itself is loosely applied in such circumstances and to elevate it to a strict and rigid definition that encompasses any and all such settlement claims against insurance companies, creates absurdities in the law and the jurisprudence of the land as it exists.

30. That ssuch a wide definition inherently creates a cause of action based on the status of the Defendant, which implies that a suit is a declaratory suit based solely on the character of the Defendant, e.g. that a TPB suit cannot be brought against an insurance company but can be filed against another legal entity in the Small Claims Courts.

31. That historically, the use of the term 'declaratory suit' to refer to CAP 405 settlement claims against insurance companies in Kenya, was created by Kenyan plaintiffs' lawyers to circumvent payment of filing fees which was demanded by court registries when TPB contractual suits were presented for filing in court. That the Plaintiffs' lawyers thus craftily resorted to framing such suits to include prayers seeking declarations of settlement of the original/primary suits by the insurer which did not attract prorated court fees.

32. That with time, the term 'declaratory suit' in Kenya, exclusively came to refer to such suits and it is noteworthy to note that this practice of filing and using the term 'declaratory suit' to exclusively refer

to all CAP 405 enforcement claims against insurers is peculiar to Kenya only and is unknown to any other respectable legal system on the planet.

33. It was argued that the blanket inclusion of TPB suits in the limitless definition of 'declaratory suits' given by the honourable court above has inadvertently resulted in the ousting from the seat of justice numerous litigants who stood in line at the small claims court awaiting for fruition of the decrees.

34. That a TPB claim is based on the law of contract because the plaintiff seeks to enforce terms of a contract to which he is a beneficiary and that its legal substratum is the law of contracts and the Small Claims Courts are perfectly mandated under section 12(1)(a) and (d) of the *Small Claims Court Act* to hear and determine matters arising from contracts and compensation claims.

35. That this court has unlimited jurisdiction and is empowered under *the constitution* of Kenya to supervise over the administration of justice especially in the subordinate courts with particular regard to Article 49? which advocates for the right to access to justice for all and it is only fair that the same is upheld. 18. That the Small Claims Courts were created to clear the backlog of cases jammed in the Magistrates Courts and the all-encompassing definition of 'declaratory suit' given by the honourable court will reverse the gains made by the Small Claims Courts in hearing and determining TPB suits against insurance companies leading to inordinate delays in the conclusion of matters arising from CAP 405.

36. That the holding of the court herein while sound and firmly founded on law, overly stretches the definition of 'declaratory suit' and the same should restrict the said definition refer to suits seeking declaratory reliefs only and leave out TPB suits based on contracts.

37. That section 80 of the CPA and Order 45 rule 1 provide that; 'Any person who considers himself aggrieved ...The wording of this section confers locus upon ANY person aggrieved to approach court for a review where no appeal has been filed. The preamble to the CPA provides it to be the prescribed '...procedure in civil courts." Sections 1A and 1B of the CPA proclaim the overriding objectives of the court to be, "to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act." "1B(1) For the purpose of furthering the overriding objective specified in in section 1A, the court shall handle all matters presented before it for the purpose of attaining the following aims. (a) The just determination of proceedings; (b) The efficient disposal of business of the court; (c) The efficient use of available judicial and administrative resources. (d) The timely disposal of the proceedings, and all other proceedings in the court... Because of the immense widespread public effect that the impugned ruling herein has occasioned, this application well suited. An application for review in the High Court is not restricted to parties only. This is because the court is clothed with original and unlimited jurisdiction and its primary duty is to do justice under any and all circumstances. As this Application is also brought under Article 165 of *the constitution*, it inherently touches on human rights accessibility to justice and the administration of justice in the Small Claims Courts and the High Court is duty bound to interpret the law in such a manner that resolves contentious issues expeditiously and conveniently.

38. That at paragraph 13 of the Affidavit in Reply by the Respondent admits that Small Claims Courts have jurisdiction to hear contractual matters and that the impugned judgement has had unintended legal consequences.

39. That the Applicant has not "attacked' or "scandalized' or "assaulted" the impugned judgement and the language of the Respondent in the Affidavit in Reply is incendiary and purely intended to inflame and incite the court's passions against the Applicant's otherwise meritorious case.

40. That the Respondent cannot ask the court cannot to ignore and overlook the disruption of the hearing of "declaratory suits' in the Small Claims Courts caused by the all-encompassing definition of 'declaratory suit' in the impugned judgement the when the entire country and judicial system is affected.

41. That the Respondent will suffer no prejudice whatsoever if the Application is allowed because the subject suit in the impugned judgement was one seeking an enforcement of a judgement by way a 'declaratory suit, which legal finding the Applicant does not contest. Conclusion.

42. That in view of the above, the Applicant prayed that the Application be allowed with costs in the cause.

The appellant/respondent's submissions

43. On the part of the appellant/respondent, it was submitted at length, relying on various case law that the applicant herein has no locus standi to seek for review of the judgment of this court since he was not a party to the appeal and that neither did he apply for leave to be enjoined.

44. Further, that section 80 of the *Civil Procedure Act* and Order 45 of the Civil procedure Rules do not allow a person who is not a party to the proceedings to either appeal or apply for review of the Court's decision. Reliance was placed on Kenya Power & Lightning Company Ltd v Benzene Holdings Limited t/a Wyco Paints [2016]KECA 73 (KLR), HA v LB [2022]KEHC 2886 (KLR).

45. On jurisdiction to review the judgment as prayed, the respondent/ appellant submitted relying on the case of Republic v Advocates Disciplinary Tribunal Exparte Appollo Mboya [2019] e KLR where the High Court considered the import of section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules and enunciated ten principles culled from the two provisions as reproduced in that decision.

46. It was submitted that the applicant's application had not met the threshold for review of this court's impugned judgment. Counsel reproduced paragraphs 21, 22 and 23 of the impugned judgment and submitted that this court did not fall into any error in the decision that it made by defining what a declaratory suit is and concluding that the *Small Claims Court Act* did not confer on the Small CALIMS Court the jurisdiction to hear and determine declaratory suits. Further reliance was placed on the case of Stephen Wanyoike Kinuthia (suing on behalf of John Kinuthia Marega (deceased) v Kariuki Marega Mungai [2018] KECA 623 (KLR where the court defined what constitutes mistake or an error on the face of the record, citing Nyamogo & Nyamogo v Kogo {2001) EA 174, National Bank of Kenya Limited v Ndungu Njau [1997] KECA among others.

47. The appellant/respondent further submitted that this court was functus officio and cannot reopen the case hence Article 159 of *the Constitution* could not be used. He relied on the filed decisions among them Telkom Kenya Limited v John Ochanda (suing on behalf of 996 former employees of Telkom Kenya Limited) [2014] e KLR on the definition of functus officio by the Court.

48. The respondent's counsel further submitted that there was no sufficient cause for this court to review its decision as impugned and he relied on several authorities to support his position among the case cited are Lord Wolf's Final Report on Access to Justice (HMSO, July 1996 Cahpter 4 para 2), Asanyo & 3 others v Attorney General [2020] KESC 62.

49. Counsel submitted that the applicant had the right to appeal against the decision in the case where the Adjudicator struck out his case in the Milimani SCC E3443 and not to come to this court.

50. On whether this court erred in defining what declaratory suit is, it was submitted that this court was correct in its definition and in finding that section 12 of the *Small Claims Court Act* does not provide

for jurisdiction of the Court to include Declaratory suit which is a suit upon a judgment and in this case, falling under section 10 of Cap 405 and as pronounced in Willis Onditi Odhiambo v Gateway Insurance Co. Ltd [2014]e KLR, Blue Shield Insurance Co. Ltd v Joseph Mboya Ogutu and this court's decision in Roseline Violet Akinyi v Celestine Opiyo Wagwau [2020]e KLR, amongst other decisions.

51. The appellant's counsel maintained that the claim by the claimant/original respondent in this appeal was not for enforcement by a third-party contract of insurance between the claimant and the respondent in the appeal but for enforcement of a judgment entered into against a person insured by the respondent and therefore based on a 'court judgment.' That declaratory suits to enforce judgments are well recognized in our jurisdiction, not as a result of the craftiness of advocates trying to cheat the system of court filing fees as posited by the applicant's counsel. That no court has ever said that a declaratory suit under section 10 of Cap 405 was such a coinage.

52. It was submitted that the applicant should have appealed against the striking out of his suit and not to come to this court wherein he was not a party and that by doing so, he proceeded in the wrong direction.

53. This court was therefore urged to dismiss the application with costs to the applicant.

Determination

54. I have considered the application, the grounds and supporting affidavit. I have also considered the replying affidavit and the grounds of opposition together with the respective parties elaborate written submissions. The issue for consideration is whether there is merit in the prayers sought for review and clarification of the judgment of this court rendered on 25th June, 2024-not 26th June, 2024 as has been quoted by the appellant's counsel in the submissions.

55. The application cites Articles 159 (1)(2) and 165(3)(a)(6) of *the Constitution* as well as section 80 of the *Civil Procedure Act*, not Rules. The latter is the provision for review of decrees or orders while the former are constitutional provisions for the judicial authority and the principles of judicial authority and the jurisdiction of the High Court.

56. Section 80 of the *Civil Procedure Act* as cited provides as follows:

> 80. 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.

57. The above section is the substantive law on review of decrees or orders in civil matters. A decree is the summation of the judgment while an order is the summation of a ruling. The procedural aspect that operationalizes the above section is Order 45 of the Civil Procedure Rules which stipulates that:

> Order 45 - Review
>
> 1. Application for review of decree or order
>
> (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.

2. To whom applications for review may be made

(1) An application for review of a decree or order of a court, upon some ground other than the discovery of such new and important matter or evidence as is referred to in rule 1, or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the judge who passed the decree, or made the order sought to be reviewed.

(2) If the judge who passed the decree or made the order is no longer attached to the court, the application may be heard by any other judge who is attached to that court at the time the application comes for hearing.

(3) If the judge who passed the decree or made the order is still attached to the court but is precluded by absence or other cause for a period of 3 months next after the application for review is lodged, the application may be heard by such other judge as the Chief Justice may designate.

3. When court may grant or reject application

(1) Where it appears to the court that there is not sufficient ground for a review, it shall dismiss the application.

(2) Where the court is of opinion that the application for review should be granted, it shall grant the same:

Provided that no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made without strict proof of such allegation.

4. Application where more than one judge hears

(1) Where the application for a review is heard by more than one judge and the court is equally divided the application shall be dismissed.

(2) Where there is a majority, the decision shall be according to the opinion of the majority.

5. Re-hearing upon application granted

When an application for review is granted, a note thereof shall be made in the register, and the court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

6. Bar of subsequent applications

No application to review an order made on an application for a review of a decree or order passed or made on a review shall be entertained.

58. In the case of Sanitam Services (E.A.) Limited V Rentokil (K) Limited & Another [2019] eKLR, the Court of Appeal held that: -

> "Jurisdiction to review a judgment or order of a court is donated by Section 80 of the *Civil Procedure Act* and Order 45 Civil Procedure Rules. By those provisions of law, any person considering himself aggrieved by a decree or order from which an appeal is allowed but from which no appeal has been preferred or is aggrieved by a decree or order by which no appeal is 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 – a person who fits within those categories may apply for a review of judgment or to the court which passed the decree or made the order and this should be done without unreasonable delay".

59. The question before me, therefore, is whether the applicant has satisfied any of the conditions set out in Order 45 of the Civil Procedure Rules. In the case of Alpha Fine Foods Limited v Horeca Kenya Limited & 4 Others (2021) eKLR, Mativo J stated:

> "The power of review can be exercised by the court in the event discovery of new and important matter or evidence which despite exercise of due diligence was not within the

knowledge of the applicant or could not be produced by him at the time when the order was made. As the Supreme Court of India [15] stated: -

> "The power can be exercised on the application of a person on 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 order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for stabling it. It may be pointed out that the expression "any other sufficient reason" ..... means a reason sufficiently analogous to those specified in the rule."

60. Order 45 Rule 1 (1) (b) Civil Procedure Rules sets out the parameters for an Application for Review. This is for purposes of avoiding a scenario where the Review Court turns into an Appeal Court over its own Ruling or Judgment. Thus, the Court may only hear a new and important matter or evidence which was not within the knowledge of an Applicant or could not be produced by him at the time when the Order was passed. Secondly, the Court may only consider a mistake or error apparent on the face of the record. On this, the record must speak for itself or by itself without much explanation. Thirdly, the court may consider any other sufficient reason.

61. The Court of Appeal in the case of National Bank of Kenya Ltd. –vs- Ndungu Njau (Civil Appeal No. 211 of 1996 (UR) held 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. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be ground for review."[emphasis added].

62. The Court of Appeal in Pancras T. Swai –vs- Kenya Breweries Ltd. (2014) eKLR at paragraph *23* still on Review stated thus:

> "The Applicant's right to seek review though unfettered, could not be successfully maintained on the basis that the decision of the court was wrong either on account of wrong application of the law or due to failure to apply the law at all."[emphasis added]

63. In the long list of grounds upon which the application is premised, the applicant accuses this court of failing to interpret the law properly and defining 'declaratory suit' widely to include third part beneficiary contracts under CAP 405 Laws of Kenya and therefore ousting the jurisdiction of the Small Claims Court in the determination of such disputes which is a manifest injustice to parties suing before the said Court with such many claims waiting to be heard.

64. The applicant also claims quite graphically that the term 'declaratory suit does not exist in our jurisdiction but was coined by crafty advocates who were hell net to avoid paying court fees based on quantified claims and he does on to cite quite elaborately, decisions from foreign jurisdictions on what he considers to be a semblance of 'declaratory suit' is all about, in which cases, the courts in those

jurisdictions call it third party beneficiary contracts. Counsel for the applicant then insists that the SCC has jurisdiction to hear and determine third party beneficiary contract cases under section 10 of Cap 405 and that such contracts are contracts under section 12 of the *Small Claims Court Act*.

65. This court appreciates the above submissions which are well thought out and quite innovative.

66. However, in my humble view, any person reading the application, its grounds and affidavit in support as well as the detailed submissions filed by the applicant can glean that the accusations or lamentations which are repeated by the applicant clearly and in no uncertain terms challenge the decision of this court on account of "the decision of the court was wrong either on account of wrong application of the law or due to failure to apply the law at all." See Pancras T. Swari –vs- Kenya Breweries Ltd (supra). This court is accused of failure to interpret and define the term 'declaratory suit' correctly and in defining it so widely as to include third party beneficiary contracts under section 10 of Cap 405; and that as a consequence, access to justice is impeded for litigants who are in the que waiting to be heard in similar cases pending before the Small Claims Court.

67. As was stated in the National Bank of Kenya v Ndungu Njau, (supra), nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be ground for review.

68. The applicant also accuses this court of applying or interpreting the jurisdiction of the Small Claims Court wrongly by removing such jurisdiction which falls under section 12(a) of the *Small Claims Court Act*.

69. Section 12 of the *Small Claims Court Act* provides that:

> 12. Nature of claims and pecuniary jurisdiction
>
> (1) Subject to this Act, the Rules and any other law, the Court has jurisdiction to determine any civil claim relating to—
>
> (a) a contract for sale and supply of goods or services;
>
> (b) a contract relating to money held and received;
>
> (c) liability in tort in respect of loss or damage caused to any property or for the delivery or recovery of movable property;
>
> (d) compensation for personal injuries; and
>
> (e) set-off and counterclaim under any contract.
>
> (2) Without prejudice to the generality of subsection (1), the Court may exercise any other civil jurisdiction as may be conferred under any other written law.
>
> (3) The pecuniary jurisdiction of the Court shall be limited to one million shillings.
>
> (4) Without prejudice to subsection (3), the Chief Justice may determine by notice in the Gazette such other pecuniary jurisdiction of the Court as the Chief Justice thinks fit.

70. I have underlined jurisdiction in contract matters to show how specific and precise the legislature was in stating the jurisdiction of the SCC as far as contracts are concerned and therefore the question is, between the applicant and this court, who is defining 'declaratory suit so widely as to exclude clear jurisdiction of the Small Claims Court?

71. The respondent/ appellant has cited several decisions where the courts in this country have clearly pronounced themselves on what declaratory suit is and therefore it would in my view, be absurd for this court to go importing from foreign jurisdictions terms and definitions to suit this applicant and grant the orders sought. I find no lacunae in the Kenyan judicial circles on what a declaratory suit is as far as Cap 405 of the Laws of Kenya is concerned. I therefore decline the invitation to stray into the foreign lands to find a definition of what our courts, right up to the Court of Appeal have already defined as elaborately cited by the appellant/ respondent's counsel.

72. The Claim by the respondent in this appeal before the Small Claims Court was by way of a declaratory suit against the Insurance Company, to settle a decree of the said court passed against the respondent/ claimant in a running down matter. Section 12(1)(a) and (b) of the *Small Claims Court Act* specifies which contracts the Court has jurisdiction to hear and determine disputes over and nothing like a contract of third-party beneficiaries under CAP 405 or something similar thereto is mentioned. In fact, the contract under section 12(1)(a) of the *Small Claims Court Act* which the applicant's counsel has made too much reference to is (a) a contract for sale and supply of goods or services, whereas under clause (b) is a contract relating to money held and received. These are the only two contracts referred to in the Act.

73. Therefore, whence did the applicant expect to borrow jurisdiction from to confer or cloth the *Small Claims Court Act* with?

74. As if the applicant is so desperate that Kenyans queuing before the Small Claims Court are left remediless following the decision of this court which is impugned herein, I take the liberty to remind the applicant and others that section 48 of the *Small Claims Court Act* provides for the Right to lodge claim in other Courts and stipulates that:

> Nothing in this Act precludes a person from lodging a claim that is within the jurisdiction of the Court in any other Court if that person elects to institute proceedings in that other Court to hear and determine that claim.

75. In other words, it is not true to assert that no other court has jurisdiction to hear and determine disputes which are within the purview of the Small Claims Court.

76. In this case, however, this court having determined, with strong conviction that the Court has no such jurisdiction to hear and determine declaratory suits as no such jurisdiction exists in the Act and none can be read in or conferred by craft of this court, and whether the applicant and others find that decision to be an error in law or wrong interpretation of section of section 12 of the *Small Claims Court Act* by erroneously ousting the jurisdiction of that court, the court having struck out the suit as filed, the applicant and others have the opportunity to file suits in appropriate courts with jurisdiction to hear and determine the dispute.

77. On the part of the applicant herein, he had the opportunity to file an appeal to the High Court against the order striking out his suit on account of want of jurisdiction and the Adjudicator's reliance on the judgment of this court which is impugned herein.

78. To attempt to compel this court to interpret and clarify its judgment to exclude or include the claim as stated by the applicant is to ask this court to sit on appeal of its own judgment which is unacceptable. This court is functus officio in that respect and I would agree with the appellant's submissions wholly that this court is functus officio.

79. Furthermore, since there are other cases pending of similar nature before the Small Claims Court, the applicant and others can seek a different interpretation from another High Court which is not bound by the judgment of this court on the same issue.

80. I will now briefly analyze the appellant's contention and submission that the applicant has no locus standi to either appeal or seek for review of the judgment of this court as impugned.

81. There are two schools of thought and interpretations by two eminent High Court Judges who have since been elevated to the Court of Appeal.

82. One line of interpretation is that the words 'any person' as used in section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules do not restrict the filing of an appeal or application for review by only parties to the suits and appeals. That interpretation argues it would be too restrictive as to lock out interested parties who may be affected by the decisions of the court from appealing or applying for review of the decisions o which they were not parties. It posits that it is not correct to say that only parties to appeals or suits can apply for review or appeal.

83. The interpretation finds support in the case of HA v LB [2022] eKLR Machakos High Court Civil Appeal No. 188 of 2021 by Odunga J (as he then was) where he stated, material to this matter that:

> " ...In my considered view the wording of the provisions of Order 45 rule 1 are meant to take into account the fact that the said provisions are not restricted to parties to a suit since it talks of "any person considering himself aggrieved". An aggrieved party may not find the avenue of an appeal feasible and may apply for review without locking out those parties who may wish to pursue an appeal from doing so. But to apply for review with the intention of opening up fresh fronts for litigation on appeal against the order emanating from review and an appeal against the order sought to be reviewed amounts, in my view, to an abuse of the process of the Court. It would also contravene the overriding objective as provided under sections 1A and 1B of the *Civil Procedure Act* whose aim is the disposal of cases expeditiously and avoidance of multiplicity of proceedings...."

84. Accordingly, from the above decision, it may entirely not be correct to say that a person who is not a party to an appeal or a suit cannot apply for review or to appeal as far as section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules are concerned.

85. Mativo J interpreted the provisions differently as follows in Abdul Waheed Sheikh and Abdul Hameed Sheikh as Trustees of the Sheikh Fazal Ilahi Noordin Charitable Trust v Commissioner of Lands & 5 others [2018] eKLR, after framing the issue upon an application for review as follows;

> " a. Whether the applicant is "an aggrieved person" within the scope of Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules, 2010."

86. Resolving that issue, the learned Judge went on an exploration to interpret the provisions thereof in the whole context of section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules and stated as follows, and I will quote him at length:

> " 9. The applicant's counsel, Mr. Litoro, argued that the applicant is aggrieved by the judgement and decree rendered in this case on 18th May 2012. He argued that the applicant saw a vacant plot, and, learnt that the lease for the plot had expired. He applied for a letter of allotment. Counsel also argued that the

applicant learnt of the existence of the decree issued in this case, hence, this application.

10. The applicant's argument as I understood it is that section 80 of the *Civil Procedure Act*[4] and Order 45 Rule 1 of the Civil Procedure Rules, 2010 permit "any person who considers himself aggrieved by the decree" to apply for review. In short, the applicant's case is that he is aggrieved by the judgement in this suit. This argument raises a pertinent question of "who is an aggrieved person within the ambit of section 80 and Order 45 Rule 1" which reads:

> "Any person who considers himself aggrieved." Its common ground that the applicant was not a party in this case. This question warrants a proper construction of the foregoing provisions. I will attempt to do so.

11. Section 80 of the *Civil Procedure Act*[5] 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 judgement to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.

12. Order 45 Rule 1 of the Civil Procedure Rules, 2010 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 review of judgement to the court which passed the decree or made the order without unreasonable delay."

13. In construing the above provisions, the fundamental question that warrants consideration is whether the phrase "any person considering himself aggrieved" is wide enough to include a person who initially was not a party

to the proceedings but at a later stage is affected or claims to be affected by an order or decree adverse to his interest(s). The applicants' argument as I understand it seems to suggest that the above provisions are wide enough to cover even a stranger, the only essential requisite being that he must consider himself to be an aggrieved person. Sadly, counsel for the applicant did not even attempt to explain the applicable tests, or address his mind to the question whether it is objective or subjective. Both counsels did not cite authorities to assist the Court on this pertinent issue, yet the determination of the this application rests on a proper analysis and resolution of the question under consideration.

14. The scope of review jurisdiction can be only utilized on the specific grounds mentioned in Order 45 Rule 1 of the Civil Procedure Rules 2010 and Section 80 of the Act. Section 80 gives the power of review and Order 45 sets out the rules. The rules in my view restrict the grounds for review. The rules lay down the jurisdiction and scope of review limiting it to the following grounds; (a) discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or; (b) on account of some mistake or error apparent on the face of the record, or (c) for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without un reasonable delay.

15. The important words to note in Order 45 Rule 1 (b) are "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 review of judgement to the court which passed the decree or made the order without unreasonable delay."

16. In my view, a proper construction of the natural and ordinary meaning of the words "was not within his knowledge or could not be produced by him at the time when the decree was passed" and the words "desires to obtain a review of the decree or order" leads to the conclusion that the words refer to a person who was a party to the proceedings. It is beyond doubt that these words leave no room for doubt that the remedy of review could be availed of only by a person who initially was a party to the proceedings in which either a decree had been passed or an order had been made against him, otherwise the very essence of the grounds on which a review would be competent, would be rendered ineffective. It is, therefore, obvious that a stranger to the proceedings cannot be contemplated in true meaning of the above words especially the words "was not within his knowledge or could not be produced by him at the time when the decree was passed." These words are clearly referring to a person who was a party and participated in the proceedings. Otherwise, the use of the could not be produced by him at the time when the decree was passed could be rendered useless since a stranger who was not a party cannot be said to have been in a position to produce the evidence at the time of passing the decree since he was not a party then.

17. In view of the plain meaning of the above words, it is beyond argument that a stranger would not be permitted to avail of the grounds on which a review petition would be competent. I therefore, do not agree with the contention by the learned counsel for the applicant which suggests that a wider interpretation of the words "any person considering himself aggrieved" would be the only proper and reasonable interpretation. In fact, such a construction is totally illogical and can lead to absurdity since it would open the door for endless litigation since it implies that a stranger could easily walk in into already determined proceedings and re-open them.

18. A proper construction of the rule would entail reading the opening words, namely "any person considering himself aggrieved" together with paragraphs (a) and (b). The opening statement, that is, "any person considering himself aggrieved" cannot be read in isolation. Provisions of a statute need to be construed in a holistic manner so as to get the real intention of the legislature. It is my view that these words would have to be read and interpreted in the light of the main rule and when so done in my view their operation would be restricted and would cover the case of only those persons who initially were party to the proceedings.[6]

19. The touchstone of interpretation is the intention of the legislature. The language of the text of the statute should serve as the starting point for any inquiry into its meaning.[7]Courts generally assume that the words of a statute mean what an "ordinary" or "reasonable" person would understand them to mean.[8] If the words of a statute are clear and unambiguous, the court need not inquire any further into the meaning of the statute. One can confidently assume that Parliament intends its legislation to be interpreted in a meaningful and purposive way giving effect to the basic objectives of the legislation. In other words as was appreciated by the Court of Appeal in Kimutai vs. Lenyongopeta & 2 Others[9] citing Lord Denning:-[10]

> "The grammatical meaning of the words alone, however is a strict construction which no longer finds favour with true construction of statutes. The literal method is now completely out of date and has been replaced by the approach described as the "purposive approach". In all cases now in the interpretation of statutes such a construction as will "promote the general legislative purpose" underlying the provision is to be adopted. It is no longer necessary for the judges to wring their hands and say, "There is nothing we can do about it". Whenever the strict interpretation of a statute gives rise to an absurd and unjust situation, the judges can and should use their good sense to remedy it – by reading words in, if necessary – so as to do what Parliament would have done, had they had the situation in mind." (Emphasis added).

20. Adopting the construction advanced by the applicant's counsel not only goes against the clear meaning of the rule as explained above but also leads to an absurdity. It could not have been the intention of the legislature to create a situation whereby parties would litigate in Court, sometimes for years as has

happened in this case and open the door for a stranger to move the Court to review, set aside or vary the judgment or decree, or re-open the proceedings. Such a scenario, would make nonsense the established principle of finality of Court determinations and make litigation endless.

21. The underlying rationale for my above argument is the need to give effect to the finality of judgments. Where a cause of action has been litigated to finality between parties, a subsequent attempt by one party or a stranger as in this case to proceed against the successful party on the same cause of action or issues which have been conclusively determined should not be permitted. The reason is simple. It is necessity to limit needless litigation and ensure certainty on matters that have been decided by the Courts.

22. As stated above, the words was not within his knowledge or could not be produced by him at the time when the decree was passed or order made certainly refer to the party who was before the Court at the time the decree was made or passed. First, a natural and ordinary construction of the foregoing provision leads to the irresistible and logical conclusion that the material or evidence could only have been produced by the person who was in Court at the time the decree was passed. Second, the words "any other sufficient reasons" used in Order 45 means a reason sufficient on grounds at least analogous to those mentioned in paragraphs (a), (b), and (c) of Rule 1 of Order 45. As repeatedly stated by this Court, a review, by its very nature is not an appeal or a rehearing merely on the ground that one party or another conceives himself to be dissatisfied with the decision of the Court. It can only be granted for some sufficient cause akin to those mentioned in Order 45 Rule 1 of the Civil Procedure Rules 2010 which provisions incorporate the principles upon which a review can be granted. This fortifies my argument that a stranger may not easily successfully apply for Review since the grounds to be relied upon are analogous to each other and one wonders how a stranger would satisfy the first ground discussed above considering that he was not a party to the case.[11]

23. Its trite that the power to review a judgment or an order can be exercised on the application of a person on 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 order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for stabling it. It may be reiterated that the expression "any other sufficient reason" means a reason sufficiently analogous to those specified in the rule.[12] Where the application is based on sufficient reason it is for the Court to exercise its discretion.[13]

29. For arguments sake even if I were to find that the phrase any person is wide enough to cover the applicant, (which is impossible), I am not persuaded that he has established that he is an aggrieved person within the ambit of the Rule. His advocate submitted that the applicant saw a vacant plot, and applied for

> allotment. No evidence of the alleged application was tendered (and even if it was tendered), an application for allotment cannot per se have conferred upon him any rights on the plot nor can it be said that his application for allotment would have been successful. In my view, the applicant has not established any interest even in the slightest way to justify his assertion that he is "an aggrieved person" within the meaning of the above rule.

87. This position was taken up by the Court of Appeal in Attorney General v Bala (Civil Appeal 223 of 2017) [2023] KECA 117 (KLR) (3 February 2023) (Judgment) Okwengu, H.A.Omondi and Mativo JJA where they stated that:

> " The right to appeal is a creature of statute and an appeal can be presented, only: (i) by a party in the suit if he is aggrieved by the judgment; or (ii) by a person who is not a party but who is aggrieved by the judgment if he seeks and gets leave of the court to prefer an appeal against the judgment. Unless a right of appeal is clearly and expressly given by statute, it does not exist. Whereas a litigant has a right to institute any suit of a civil nature in some court or another, no right of appeal can be given except by express words. In other words, a right of appeal infers in no one and therefore an appeal for its maintainability must have the clear authority of law. The right of appeal, which is a statutory right, can be conditional or qualified. If the statute does not create any right of appeal, no appeal can be filed."

88. The Supreme Court on its part had this to say concerning section 21A of the *Supreme Court Act*, in a more recent case of Kaluma v NGO Co-ordination Board & 5 others (Application E011 of 2023) [2023] KESC 72 (KLR) (Civ) (12 September 2023) (Ruling) where the Supreme Court was confronted with the question of whether the Supreme Court had jurisdiction to entertain an application seeking a review of its judgment, by a person who was never a party to the proceedings that culminated in the said judgment. The Supreme Court held that the Supreme Court had neither jurisdiction to sit on appeal nor to review its decisions other than in the manner provided for by section 21A of the *Supreme Court Act* or in Fredrick Otieno Outa vs Jared Odoyo Okello & 3 others [2017] eKLR.

89. The apex court stated that an application for review could not be invoked by any person who would appeal the matter but was yet to do so. The Supreme Court derived its jurisdiction from article 163 of *the Constitution* and subsequently from legislation, to wit, the *Supreme Court Act* and Rules. It was bound by its rules and procedure. Thus, a party moving the court under article 163 of *the Constitution* must be competent to do so in the first place.

90. It cited Section 21A of the *Supreme Court Act* which pprovides for the circumstances pursuant to which the Supreme Court may review its own decision on an application filed by a party. The court could not entertain an application for review of its judgment filed by an applicant who was not a party to the proceedings as that went to the root of the matter and sanctity of the already determined suit which was contested by the parties. The applicant was not competent to seek a review of the judgment.

91. That is what the Supreme Court had to say, which may necessarily not be the situation under section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules.

92. Indeed, the wordings in section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules are 'any person' and not 'any party'. However, as elaborated by Mativo J, I an inclined to go with his wholesome interpretation of the provisions on review, which restrict applications for review to parties to the proceedings and if any other person who is not a party is aggrieved by the decision, they may seek to be enjoined first as parties before they can apply for review of the decision. To do otherwise

would open a flood gate of strangers to proceedings which are concluded to reopen the same any time under the guise of review.

93. For the above reasons, I am in agreement with the appellant/ respondent herein that the applicant had no locus standi in this matter to seek for review of the judgment of this court more so, being a party to similar proceedings which were struck out by a different court and wherein he had the opportunity to challenge that striking out and seek a different interpretation of the jurisdiction of the Small Claims Court as stipulated in section 12 thereof.

94. In the end, I find the application dated 9th September, 2024 to be devoid of any merit and the same is hereby dismissed.

95. Each party to bear their own costs of the application.

Ruling to be uploaded.

96. This file as earlier closed remains closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 31ST DAY OF DECEMBER, 2024

R.E. ABURILI

JUDGE