



REPUBLIC OF KENYA



**Ngendo v Omutoko & another (Civil Suit E006 of 2020)
[2022] KEHC 11678 (KLR) (5 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 11678 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL SUIT E006 OF 2020
MM KASANGO, J
AUGUST 5, 2022**

BETWEEN

MOSES NJANE NGENDO PLAINTIFF

AND

JOSIAH ANYANGU OMUTOKO 1ST DEFENDANT

CLEOPAS MALALA 2ND DEFENDANT

RULING

1. Moses Njane Ngendo, the plaintiff filed this case against Josiah Anyango Omutoko the 1st defendant and Cleophas Malala, the 2nd defendant, seeking judgment for declaration of breach of contract and for order compelling the said defendants to release/return stage equipment they hired from the plaintiff. This court delivered judgment on this cause on March 24, 2022. By a notice of motion dated April 13, 2022, the plaintiff seeks review of that judgment. The plaintiff seeks that the court should find that the plaintiff pleaded and proved itemized stage equipment were not returned to him.
2. By paragraph 8 of that judgment, this court made the following finding:-

“The plaintiff pleaded in his plaint setting out the itemized stage equipment hired and not returned by defendants but in his evidence before court and by written statement the plaintiff failed to testify on those itemized stage equipment. That claim for return of those specific items of stage equipment for that reason therefore remains unproved.”
3. By his application for revision, the plaintiff seeks a finding that there was an error apparent on the face of the court record because at the hearing, the plaintiff adopted his documents that he had filed together with his plaint, and amongst those documents was a letter of demand by his advocate which letter itemized the stage equipment not returned by the defendants.



ANALYSIS

4. I have considered the application and I do indeed find that there is an obvious error on the part of the court in not considering the advocate's letter of demand had itemized the stage equipment not returned to the plaintiff by the defendants.
5. Courts have had occasions to consider the definition of 'error apparent on the face of the record' which captured in the case of *Francis Ngira Batware v Ashimosi Sbitambasi T/A Ashimosi Sbitambasi & Associates Advocates & 2 others* (2018) eKLR as follows:-

“In the case of *Draft and Develop Engineers Limited v National Water Conservation and Pipeline Corporation*, Civil Case No. 11 of 2011, the High Court correctly stated that:-

‘An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is a real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by a long drawn process of reasoning or on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was also possible. Mere error or wrong view is certainly no ground for a review although it may be for an appeal.’”

6. Having reconsidered the evidence adduced by the plaintiff and the documents admitted at the hearing I am satisfied that this is a proper case for this court to review the judgment of this court. There shall be no costs to the Notice of Motion dated April 13, 2022.

DISPOSITION

7. The judgment delivered on March 24, 2022 is reviewed and the judgment of the court is as follows:-
 - a. Judgment is entered for the plaintiff against the defendant for Kshs.215,000 with interest at court rate from December 22, 2019 until payment in full.
 - b. The defendants are ordered to release to the plaintiff the following stage equipment:-

6 corner blocks, 302 metres trusses, 12, 21.5 metres trusses, 43 metres trusses, 64, 1.2 metres stands, 64, 3 feet stands, 64, 2 feet stands, 108, 1.2 metres braces, 108, 3 feet braces, 108 2 feet braces, 192 base, 126 aluminum stage panels, 320 bolts and nuts and 2, 1 metre aluminum stairs.
 - c. Plaintiff is awarded costs of the suit to be paid by the defendant.

RULING DATED AND DELIVERED AT KIAMBU THIS 5TH DAY OF AUGUST, 2022.

MARY KASANGO

JUDGE

Coram:



Court Assistant : Maurice

For Plaintiff : - Mr. Kaburu

For Defendants:- No appearance

***RULING** delivered virtually.*

MARY KASANGO

JUDGE

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