



**Mangenge v Masai & another (Civil Appeal E020 of 2022)  
[2022] KEHC 14851 (KLR) (28 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14851 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CIVIL APPEAL E020 OF 2022  
GMA DULU, J  
OCTOBER 28, 2022**

**BETWEEN**

**VICTORIA NTHENYA MANGENGE ..... APPLICANT**

**AND**

**ERIC MULE MASAI ..... 1<sup>ST</sup> RESPONDENT**

**FREDRICK MUSYOKI PHILIP ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before me is an application dated April 25, 2022 for review of this court's orders brought by way of notice of motion.
2. The application has been brought under order 45 and 51 of the *Civil Procedure Rules*, and section 3A and 80 of the *Civil Procedure Act* (cap 21) and seeks the following orders –
  1. That the ruling delivered by the court on March 23, 2022 be reviewed and the orders issued be set aside.
  2. That the costs of the application be provided for.
3. The application has grounds on the face of the notice of motion which are that the matter was originally filed by the applicant at Tawa Law Courts as SRMCC No 158 of 2019, that judgment was delivered in favour of the plaintiff who was awarded Kshs 100,633/=, that the (plaintiff) applicant was dissatisfied with the quantum of damages and filed application to appeal out of time, wherein the court delivered ruling herein on March 23, 2022 holding that the applicant pay half of the decretal amount of Kshs 50,000/= to the respondent, and that the above court order was an absurdity.
4. The application was filed with a supporting affidavit sworn by Anne Munyao advocate for the applicant, which amplifies the grounds of the application.



5. The application for review has been opposed through a replying affidavit sworn on May 20, 2022 by Kinyanjui Theuri advocate for the respondent, in which it was deponed that the court did not err in its ruling, and that the orders in the ruling of 23/3/2022 were not absurd.
6. The applicant's counsel M/s Munyao opted not to file written submissions, while the respondent's counsel Kinyanjui Njuguna & Company filed written submissions which I have considered.
7. This is a request for review of this court's orders, on the ground that the orders made by the court for payment for part of the decretal amount by the applicant to the respondent was an error and an absurdity.
8. Under the law, the review powers of this court are an exercise of discretion, and such review is principally meant to correct errors in the interests of justice to the parties before court.
9. I have perused the ruling of this court under reference. I note that the applicant did not request for stay of execution of judgment. However, under paragraph 12 of the ruling, the court made an error by observing that the applicant applied for stay of execution.
10. It is also in consideration of that issue of stay of execution, that order 2 and 3 of the ruling relating to payment of Kshs 50,000/= arose. In my view, there is an apparent error on the face of the ruling.
11. In the interests of justice therefore, I review the ruling and delete paragraph 12 of the ruling, and also delete orders 2 and 3 of the ruling relating to the payment of Kshs 50,000/= to the respondent.
12. The final orders in the ruling delivered on March 23, 2022, will thus be as follows –
  1. I extend the time for filing appeal herein. The appeal will be filed within 14 days from today (March 23, 2022).
  2. The costs of the application will follow the decision in the appeal.

**DELIVERED, SIGNED & DATED THIS 28<sup>TH</sup> DAY OF OCTOBER, 2022, VIRTUALLY AT MAKUENI.**

.....

**GEORGE DULU**

**JUDGE**

