



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CIVIL SUIT NO. 12 OF 2013**

**JNK (Suing as the legal representative of**

**MMM-Deceased.....PLAINTIFF/APPLICANT**

**VERSUS**

**THE CHAIRMAN BOARD OF GOVERNORS**

**KANYAKINE BOYS HIGH SCHOOL...DEFENDANT/RESPONDENT**

**RULING**

1. What is before me is an application brought pursuant to Sections 1A, 1B, 3A, 80, 99 & 100 of the Civil Procedure Act, Order 51 of the Civil Procedure Rules and all other enabling provisions of the law. The main prayer sought therein is the amendment of paragraph 33 of the court's judgement dated 8/5/2018.

2. The grounds upon which the application is premised, which are echoed in her supporting affidavit sworn on 2/2/2021 are that, there is an error apparent on the face of the record which ought to be rectified, to reflect the correct award intended by the court.

3. In opposing the application, Simon Njagi, the principal and Secretary of the respondent, swore a replying affidavit on 17/2/2021 in which he admits the discrepancy alluded to by the applicant, then asserts that the same goes to the root of the judgement, and that it can only be rectified on appeal and not by correction as a clerical error.

4. The parties on 12/5/2021 consented to have the application canvassed by way of written submissions. In the submissions filed, while the applicant maintains that the error on the face of the record ought to be corrected so that be ambiguity in the judgment is cleared to enable the judgment-debtor settle the decree, the respondent's view is that the same can only be rectified on appeal, and cites the decision in **Muyodi v Industrial and Commercial Development Corporation & Anor (2006) EA 243** in support of the proposition that an error apparent on the face of the record to merit the order of review must be self-evident and require no elaborate examination to be ascertained.

5. From the onset, it is clear to me that the respondent views the application to seek review rather than correction. That is the reason the decision in **Muyodi** has been cited. I consider that stand point to be erroneous when one looks at the prayer in the application. I shall proceed on the basis that the application is made pursuant to section 99 and 100 of the act. The error sought to be corrected relates to a head of damages called Loss of dependency. The award was made at paragraph 33 and the reasoning in arriving at that award is at paragraph 32. The two paragraphs record the judge to have said: -

**32. In *Chen Wembo & 2 others V IKK & another (suing as the legal representatives and administrators of the estate of CRK (deceased) 2017 eKLR* the court awarded a global award of kshs. 600,000 for the estate of 12 years old minor. In *Oshivji Kuvenji & another V James Mohamed Ongenge (2012) eKLR* a deceased minor aged 6 years was awarded a global sum of Kshs. 320,000/= under this heading.**

**33. The above decisions relate to minors of 14 years and 6 years respectively. The awards were Kshs. 600,000 and Kshs. 320,000 respectively. The deceased herein was aged 16 years and was in form four. Taking into account the age of the deceased i.e 16 years and the fact that he was in form four, his prospects were not too far away (1) that the deceased would have completed form four which users in college or university education and (2) the deceased would have matured into majority age, and help his mother. Accordingly, I find an award in the sum of Kshs. 100,000 for loss of dependency to be reasonable and fair compensation for loss of dependency. I so award.**

6. It is to me apparent that the judge in seeking to determine a commensurate award sought reliance on decided cases so as to comply with the principle of law that comparable injuries need to attract comparable awards in personal injury claims. The two decisions he cited were made six and one year earlier respectively but concerned minors younger than the deceased in this matter. In the two matters the court awarded Kshs 600,000 for the estate of a deceased age 12 and Kshs 320,000 for a deceased aged 6 years. If one was to be bound to award a comparable award, a sum less than those in the cited cases would not be compliant with the dictate of the law. For that reason, I find that the indicated sum of Kshs 100,000 instead of Kshs 1,000,000 was the consequence of a typographical error that glares on the face of the record. It glares because in the rendition and in setting out the final award the judgment actually talks of Kshs 1,000,000. When an error so glares, it yearns for correction by the court on being moved or on own motion as mandated by section 99 of the Act.

7. I therefore find that the reference to Kshs 100,000 was by error which I hereby correct and insert the correct figure in the sum of Kshs 1,000,000 in paragraph 33 of the judgment dated 8/5/2018. Having found so, I find the application dated 2/2/2021 well merited and I allow it as prayed. I ward the costs thereof to the applicant and assess such costs in the sum of Kshs 7,500

Dated signed and delivered at Meru this 5<sup>th</sup> day of August 2021

**Patrick J.O Otieno**

**Judge**

**In presence of**

Miss Wanjiru Mwangi for applicant/plaintiff

No appearance for Ag for JD/Respondent

**Patrick J.O Otieno**

**Judge**