



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**CIVIL APPEAL NO. 37 OF 2015**

**JENTRIX NATECHO.....APPLICANT**

**VERSES**

**KENYA POWER & LIGHTING.....1<sup>ST</sup> RESPONDENT**

**JOHN MASENGELI.....2<sup>ND</sup> RESPONDENT**

**JUSTINE MURIUKI.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. The Applicant’s application dated **26<sup>th</sup> September, 2019** seeks to review the judgment of this court dated **4<sup>th</sup> April, 2019** in which it apportioned liability between the Appellant and the Respondents at 50% each. The Applicant in her application avers that this was an error on record which this court can review pursuant to the provisions of **Order 45** of the Civil Procedure Rules. Her affidavit dated 27<sup>th</sup> September, 2019 state as much.

2. The Respondent vide the replying affidavit of the 2<sup>nd</sup> Respondent objects to the application and avers that this court was right in the apportionment of liability the way it did.

3. Having looked at the application and taking cognisance of the ability accorded to this court by the provisions of Order 45 stated above, the application is meritorious. The same is premised as espoused under paragraph 18 and 19 of the judgment in which the court stated as follows;

*“ The issue of liability is worth considering also. From the evidence of both drivers it is clear that they each blamed each other. The evidence of PW3, the police officer seemed to suggest even from the sketch plans that the accident occurred almost in the middle of the road.*

*In the premises I do find that both motor vehicles should shoulder equal blame. I shall apportion each 50:50 percentage liability...”*

4. Clearly that was the intention of the court. The Respondents managed and controlled the vehicles and not the Appellant/Applicant.

5. The error is thus corrected so that liability is apportioned equally and for avoidance of doubt between the Respondents at 50:50% each.

6. The rest of the terms of the judgment remains the same.

7. Costs of this application shall be in the cause

**Dated, signed and delivered in open court at Kitale this 18<sup>th</sup> day of December, 2019.**

.....

**H.K. CHEMITEI**

**JUDGE**

**18/12/19**

**In the presence of:-**

**Parties Absent**

**Court Assistant – Silvia**

**Ruling read in open court.**