



**Sahihi Housing Limited v Waititu & 4 others (Environment & Land  
Case 688 of 2021) [2023] KEELC 18489 (KLR) (6 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18489 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 688 OF 2021**

**AA OMOLLO, J**

**JULY 6, 2023**

**BETWEEN**

**SAHIHI HOUSING LIMITED ..... DECREE HOLDER**

**AND**

**HON. FERDINAND N. WAITITU & 4 OTHERS & 4  
OTHERS ..... JUDGMENT DEBTOR**

**RULING**

1. The 1<sup>st</sup> defendant/applicant has moved this court vide his application dated January 30, 2023 seeking to be granted the following orders;
  1. Spent
  2. Spent
  3. That this honourable court be pleased to review, vary or clarify the orders as issued in the judgment delivered on July 25, 2019 as to the extent of the rights and liabilities of the parties to the suit.
  4. That the honourable court be pleased to direct that the 1<sup>st</sup> Judgment debtor/applicant does liquidate decretal sums in quarterly instalments on such quantum as to be directed by the court.
  5. That the court be pleased to issue any other orders expedient in the circumstances and in the interest of justice.
  6. That costs be in the cause.
2. The applicant wants this court to review, vary or clarify the orders issued in the judgment delivered on July 25, 2019. The grounds provided in support of the application included the grievances that



the modalities of execution as proposed or intended by the plaintiff/respondent does prejudice the applicant.

3. The judgment was entered in favour of the plaintiff and against the defendants jointly and severally. The applicant contends that the liability under the decree ought to be apportioned equally amongst the judgment debtors.
4. The 1<sup>st</sup> defendant/applicant submitted that he has moved this court for review on the basis that there is mistake or error on the face of the record in relation to the extent of rights and liabilities of the parties which was not apportioned. He referred this court to decisions amongst them, the case of *Nyamogo & Nyamogo v Kogo* (2001) EA 174 which held thus

“An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of un definitiveness inherent in its very nature and it must 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 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 possible. Mere error or wrong view is certainly no ground for review though it may be one for appeal.”

5. In determining whether there was a mistake or error on the face of the record, I have looked at the plaint dated December 5, 2011 filed on the same. It is worded thus at the concluding paragraphs;

“Reasons wherefore the plaintiff prays for judgment against the defendants jointly and severally....”

6. In the impugned judgment, at page 2, Okong’o J. while summarizing the defendants case noted that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants’ advocates filed notices of appointments but never filed any statement of defences as it is only the 5<sup>th</sup> defendant who filed a statement of defence on April 17, 2014. The 1<sup>st</sup> defendant did not give any evidence to challenge the plaintiff’s case meaning the judge entered judgment as per plaint.
7. The 1<sup>st</sup> defendant argues that there is mistake or error on the judgment for not apportioning liability yet he did not defend the suit. It is my considered view and I so hold that alleged error or mistake in the judgment is a question of merit in the orders given which should be a ground of appeal not review. In the case of *Nyamogo & Nyamogo* cited above pointed that where an error has to be explained by a long drawn process of reasoning then it can hardly be said to be an error apparent on the face of the record. Further, in *Chandrakant Joshibhai Patel -v- R* [2004] TLR, 218 it had been held that an error stated to be apparent on the face of the record: “...must be such as can be seen by one who runs and reads, that is, an obvious and patent mistake and not something which can be established by a long drawn process of reading on points on which may be conceivably be two opinions.”
8. In the case of *National Bank of Kenya Ltd v Ndungu Njau*.

“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 a ground for review.” (underline mine for emphasis).

9. *Black's law dictionary*, 10<sup>th</sup> edition defines the principle of joint and several liability to mean that when two or more persons cause an injury, each is liable for the full amount of damages. The meaning was expounded further by Ngetich J in the case of *Transworld Safaris (K) Ltd v Eagle Aviation Ltd & 3 others* (2018) eKLR, holding thus;

It is trite law that where judgement or an order is entered against parties jointly or severally, the Decree Holder can proceed against all the parties or any of the parties. The party executed against has recourse to pursue the co-defendants for claim paid. This was held in *Dubai Electronics Vs Total (k) Ltd & 2 others* HCCC N0 870 of 1998 where the Court stated as follows:-

“ Clearly where you have joint liability, all tortfeasors are and each of them is liable to settle full liability. However, in a pure several liability, each tortfeasor is liable to settle the sum due to the tune of his liability. However, where liability is jointly and/or severally, the Plaintiff has an option of either directing his claim against one of the tortfeasors or making his claim against each of the torfeasors according to their individual liability. However, Defendants are entitled to reimbursement from co-Defendants in the event Plaintiff opt to recover from one of them

10. In essence, the 1<sup>st</sup> defendant applicant has recourse to seek re-imburement from his co-defendants but not to move this court under review and or clarification of the decree.
11. The 2<sup>nd</sup> prayer sought that the 1<sup>st</sup> defendant does liquate the decretal sum in quarterly instalments or such quantum as directed by this court. In order for this court to grant the request, the 1<sup>st</sup> defendant/ applicant ought to satisfy this court that he is not of means. It is as not incumbent on the plaintiff/ respondent to show evidence of investigation showing wealth of the applicant.
12. Although the applicant wants the court to allow him settle the decree in quarterly instalments, he has failed to persuade the court that he is financially pressed. He merely deposed that he has financial struggles without any elaboration. However, for the sake of the interest of justice, I will permit the 1<sup>st</sup> defendant to settle the decree in 4 equal instalments effective the 15<sup>th</sup> of July, and on the 15<sup>th</sup> of every subsequent month until payment is made in full. In default of any one instalment, the Decree holder is at liberty to execute. Costs of the application to the plaintiff.

**RULING DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6<sup>TH</sup> DAY OF JULY, 2023**

**A. OMOLLO**

**JUDGE**

