



**Kartar Singh Dhupar & Company Limited v Arm Cement  
PLC (In Liquidation) (Commercial Appeal E129 of 2022)  
[2025] KEHC 1522 (KLR) (Commercial and Tax) (14 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1522 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL APPEAL E129 OF 2022  
BM MUSYOKI, J  
FEBRUARY 14, 2025**

**BETWEEN**

**KARTAR SINGH DHUPAR & COMPANY LIMITED ..... APPELLANT**

**AND**

**ARM CEMENT PLC (IN LIQUIDATION) ..... RESPONDENT**

**RULING**

1. This is an application for review of the Judgment of Hon. Justice Patricia Gichohi, delivered on the 23<sup>rd</sup> of March 2023. The brief background of the matter is that the respondent had filed a claim in the Small Claims Court (trial court) against the appellant for payment of the sum of Ksh 629, 599.21 for goods supplied and delivered to the appellant. The trial court delivered its judgment on 23<sup>rd</sup> August 2022 in favour of the respondent as against the appellant in the sum of Ksh 629, 599.21 plus costs and interest. Aggrieved by the trial court's decision, the appellant filed this appeal on grounds among others that, the trial court erred in law by failing to appreciate that its jurisdiction was time bound and that it ran out and ceased by effluxion of time on 6<sup>th</sup> August 2022 being the date and day the court's time-bound jurisdiction ceased to exist.
2. The judgment which the applicant herein seeks to review upheld the argument by the respondent and consequently set aside the trial court's judgement. The Hon Judge Gichohi held that the judgment delivered by Hon CA Okumu (Ms)/ Adjudicator on 23<sup>rd</sup> August 2022 was done outside the statutory timelines set under Section 34 of the *Small Claims Court Act* and hence made without jurisdiction and it was therefore a nullity, bereft of any force or effect in law.
3. In the notice of motion dated the 12<sup>th</sup> of July 2024 the respondent/applicant seeks the following orders;
  - a. Spent.



- b. This Honourable Court be pleased to grant the respondent time to apply for review, variation, revision and/or setting aside of the judgment of the Honourable Justice Patricia Gichohi delivered on the 23<sup>rd</sup> March 2023 out of time.
  - c. This instant application for the review, variation, revision and/or setting aside of the judgment of the Honourable Justice Patricia Gichohi delivered on the 23<sup>rd</sup> March 2023 out of time be deemed as duly filed.
  - d. This Honourable Court be pleased to review, vary, revise and/or set aside the judgment of Honourable Justice Patricia Gichohi delivered on 23<sup>rd</sup> March 2023 upholding an unprosecuted appeal.
  - e. Costs of this application be provided for.
4. I am not aware of any provisions of the law that provides for limitation period for filing an application for review. Order 45 Rule 1 of the Civil Procedure Rules provides as follows;
- ‘Any person considering himself aggrieved;
- a. by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
  - b. by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.’
5. The *Civil procedure Act* provides in Section 80 that;
- ‘Any person who considers himself aggrieved—
- a. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
  - b. by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.’
6. The above provisions do not set time within which an application should be filed. The only requirement is that the application must be filed without unreasonable delay. What is unreasonable delay is a relative term and depends on the circumstances of each case and the applicant does not need to make an application to be allowed to file for review even where the period appears to be unreasonably long. Whether or not there was unreasonable delay in filing the application is one of the factors the court hearing an application for review will be expected to consider. The applicant will be expected to give explanation for the delay without necessarily seeking for leave to file the application for review. On this background, I do not see the need to consider prayers 2 and 3 of the instant application.
7. I have read the application, its supporting affidavit and submissions by the respondent/applicant. The appellant/respondent did not file any response to the application or submissions despite having been given a period of 14 days to do so when this matter came up for mention on 12-11-2024. The respondent/applicant submitted that there are sufficient grounds to warrant this court’s intervention,



as the judgment in question was delivered improperly, based on procedural technicalities, and resulted in a grave injustice to it. It further submits that the Honourable Justice Patricia Gichohi erred by addressing the appeal substantively without the appeal having been properly prosecuted. The respondent/applicant further submits that the judge misinterpreted the purport, intent and application of Section 34(3) of the *Small Claims Court Act* 2016 on appeals.

8. The applicant has placed reliance on the case of *Shabbir Ali Jusab v Anaar Osman Gamrai & another* [2013] eKLR, where the Supreme Court held that procedural technicalities should not be used to hinder the delivery of substantive justice. It has also sought to rely on *Biosystems Consultants v Nyali Links Arcade (Civil Appeal E185 of 2023)* [2023] KEHC 21068 (KLR), where the Learned Justice Magare held that;

‘The purpose of the *Small Claims Court Act* is to facilitate expeditious disposal of the disputes while at the same time respecting the right to be heard. The net result is that balancing the two may result at times to overshooting the 60 days.’

9. The jurisdiction of this court on matters of review is derived from the Rule and Section cited above. In the application before me, I have not seen demonstration of any new and important matter or evidence or mistake or error apparent on the face of the record. Actually, the respondent/applicant has not in its submissions addressed me on these. It must therefore be assumed that the application is grounded on the limb of ‘any other sufficient reason.’ Can the grounds relied on by the respondent/applicant in this matter be termed or categorised as any other sufficient reason? Answer to this question will determine the application.
10. The respondent/applicant has averred and submitted that the Honourable Judge erred and misinterpreted Section 34 of the *Small Claims Court Act*. It has also argued that the judge applied technicalities instead of substantive justice. It is evident that the respondent/applicant is taking issue with the judges’ understanding, interpretation and application of the law. The law on review is couched in such a way that the outcome thereof should not be tantamount to upsetting the judgement of the court. Not even the judge who passed the judgement, order or decision should effectively change their mind on an issue of law in the matter as that would violate the principle of finality and independence of thought of the judge or judicial officer. If that were to be allowed, there would be an avalanche of applications from the losing parties and thereby negatively affecting proper administration of justice.
11. In *Republic vs Cabinet Secretary for Interior and Co-ordination of National Government Ex parte Abulahi Said Salad* [2019] eKLR the Court in citing *National Bank of Kenya Ltd vs Ndungu Njau*, {1996} KLR 469 (CAK) at Page 381 held as follows; -

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.”

12. It is clear to me that the respondent/applicant herein disagrees with the decision of the Honourable Judge and in my view, disagreeing with a decision or finding or having a different interpretation of the law is not a valid ground for review. That is purely a matter for appeal. I hold that this court has no jurisdiction to reconsider and interfere with interpretation and application of the law by a court of



concurrent jurisdiction. Articles 165 (3)(e) and (6) of *the Constitution* which grants this court appellate and supervisory jurisdiction provide that;

‘3. Subject to clause (5), the High Court shall have;

- e. any other jurisdiction, original or appellate, conferred on it by legislation.
- 6. The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.’

13. Based on the above, I have come to a conclusion that the respondent/applicant has failed to demonstrate that its application is within the scope of review. The issues raised by the applicant are purely issues of law which arise from a decision of a superior court which I have no jurisdiction to overturn.

14. In conclusion and based on the reason given above, it is my considered finding that the respondent’s application dated 12<sup>th</sup> July 2024 has no merits and the same is hereby dismissed with costs.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 14<sup>TH</sup> DAY OF FEBRUARY 2025.**

**B.M. MUSYOKI**

**JUDGE OF THE HIGH COURT.**

Ruling delivered in presence of Mr. Alunya for the appellant/respondent and Miss Atim for the respondent/applicant.

