



**Kingdom Bank Limited v Wanjohi (Civil Appeal E192 of 2023)  
[2025] KEHC 3116 (KLR) (Commercial and Tax) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3116 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL APPEAL E192 OF 2023  
F GIKONYO, J  
MARCH 13, 2025**

**BETWEEN**

**KINGDOM BANK LIMITED ..... APPLICANT**

**AND**

**ALICE WANJA WANJOHI ..... RESPONDENT**

**RULING**

**Review of judgment**

1. The Notice of Motion dated 23<sup>rd</sup> April 2024, expressed to be brought under Section 1A, 1B,3A and Order 80 of the *Civil Procedure Act*, Article 159(2)(d) & (e) of *the Constitution*, seeks and order for review and/ or setting aside of its judgment and decree issued on 15<sup>th</sup> March 2024.
2. The grounds for the application are set out in the application, the supporting affidavit sworn by the applicant's legal officer, Jackson Kimathi, on 23<sup>rd</sup> April 2024 and expounded in the written submissions dated 25<sup>th</sup> November 2024.

**Background**

3. The impugned judgment and decree emanated from an appeal against a decision of the small claims court delivered on 3<sup>rd</sup> August 2023. The respondent's claim against the applicant was for Kshs. 50,600/- an amount which she had erroneously transferred to the applicant's customer's account.
4. The core issue in the appeal was whether the learned adjudicator had erred by holding that the applicant owed the respondent who was not its customer a duty of care and that it ought to have debited its client's account without their knowledge or instructions.



5. In the impugned judgment, the court upheld the adjudicator's decision. It reasoned that even though the respondent's request to reverse the money was received by the applicant after its customer had withdrawn the money, the applicant was under a duty to demonstrate that it took the necessary steps on recalling the money. It held that it was not enough for the applicant to state that the customer's account did not have sufficient funds as it had a duty to ensure that it did not aid a fraud.

### Grounds

6. The main grounds for the application for review are that the court misdirected itself in relying on the obligation of the applicant to reverse the transaction done by the respondent, when the issue was not raised by either parties at trial and on appeal; ignoring that as soon as it received notification from Safaricom, it froze all available and incoming funds to the customer's account, and that all calls made by the applicant to the customer were ignored.
7. The applicant contends that the judgment goes against all rules and principles of equity and fairness and poses a potential negative effect in banking policy and practice; that the precedent that the judgment sets extends the liability of banking institutions even to circumstances that are clearly unforeseeable and that this presents a potential floodgate in banking litigation in Kenya.
8. The applicant relied on *Otieno, Ragot & Co. Advocates v National Bank of Kenya Limited* [2020] eKLR, *Arun C. Sharma v Ashana Raikundalia T/A Raikundalia & Co. Advocates & 2 others* [2014] eKLR and *Francis Njoroge v Stephen Maina Kamore* [2018] eKLR.

### Response

9. The respondent filed a replying affidavit sworn on 16<sup>th</sup> October 2024 and written submissions dated 17<sup>th</sup> December 2024. The respondent clarified that the decretal sum has already been paid out.
10. The respondent's core arguments are that the applicant has not met the threshold for review and that the grounds raised are fit for an appeal rather than a review. She also asserted that prejudice is not one of the grounds which the Court will consider in granting a review.
11. The respondent relied on the decisions in *Paul Mwaniki v National Hospital Insurance Fund Board of Management (Miscellaneous Application 455 of 2016)* [2020] KEHC 7414 (KLR), *Nyamogo & Nyamogo v Kogo* [2001] EA 170 and *Republic v Medical Practitioners & Dentists Board & Another & another*; and *(Miscellaneous Civil Application 59 & 63 of 2019 (Consolidated))* [2021] KEHC 298 (KLR).

### Analysis and determination

12. Has the legal threshold for review been met by the applicant?
13. Review of own decision is provided for in Section 80 of the *Civil Procedure Act*. And, grounds for review are stated in Order 45 Rule 1 of the Civil Procedure Rules, to be: -
  - a. 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
  - b. On account of some mistake or error apparent on the face of the record, or
  - c. For any other sufficient reason.



14. The applicant has sought review on account of an error on the face of the record. Its reason being that, a Bank cannot be liable for the actions of its client, which actions were done outside its knowledge.
15. The respondent was of a different view; that the ground in the application is not an error on the face of the record for which review may issue, but, one fit for appeal.
16. The tension arising from the two sides of the divide is resolved by making the 'distinction between a mere erroneous decision and an error apparent on the face of the record'. Nyamogo & Nyamogo Advocates v Kogo [supra].
17. An error on the face of the record is one: 'Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions...'
18. But, review will be declined, where:
  - a. An error has to be established by a long-drawn process of reasoning or on points where there may conceivably be two opinions.
  - b. If a view adopted by the court in the original record is a possible one...even though another view was also possible.
  - c. Mere error or wrong view is certainly no ground for a review although it may be for an appeal." Nyamogo & Nyamogo Advocates v Kogo [ibid].
19. The argument by the applicant is that the court made the wrong or erroneous decision; this is not an error on the face of the record within the sense of review under section 80 of the CPA. The argument offered in proof of the error on the face of the record, is an invitation for the court to sit on appeal on its own judgment.
20. In the upshot, the application dated 23<sup>rd</sup> April 2024 is not merited and is dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 13<sup>TH</sup> DAY OF MARCH, 2025.**

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**F. GIKONYO M**  
**JUDGE**

In the presence of: -

Mugo for Respondent

Ms. Muema for Munyalo for Appellant

CA - Kinyua

