



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Nalianya v Mwanza (Civil Appeal E011 of 2024)
[2025] KEHC 3432 (KLR) (21 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3432 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL APPEAL E011 OF 2024
WM MUSYOKA, J
MARCH 21, 2025**

BETWEEN

SYLUS NALIANYA APPELLANT

AND

ELIZABETH ANINDO MWANZA RESPONDENT

(An appeal arising from the orders made in a ruling of Hon. Kassim Akida, Resident Magistrate, RM, delivered on 5th March 2024, in Busia SCCCC No. E001 of 2023)

JUDGMENT

1. The suit, at the primary court, was initiated by the respondent against the appellant, for Kshs. 138,580.00, plus costs and interests. In defence, the appellant denied being loaned any money by the respondent, but stated that the respondent used to send money to his MPesa account, through his telephone line, in respect of tithes, offerings and fundraising.
2. The matter was disposed of viva voce. 3 witnesses testified for the respondent and 2 for the appellant. Judgement was delivered on 14th December 2023. It was ordered that the appellant should refund Kshs. 38,580.00 to the respondent.
3. The respondent wrote to the court, vide a letter, dated 18th December 2023, pointing out that her claim was for Kshs. 138,580.00, and not Kshs. 38,580.00, and requesting for review of the judgement. That application was allowed, on 3rd January 2024, and the judgement figure was revised to Kshs. 138,580.00.
4. that review was challenged, vide an application, dated 22nd January 2024, by the appellant. On 1st February 2024, the orders of 3rd January 2024 were set aside, and the judgment of 14th December 2023 reinstated. The appellant was granted time to respond to the review application. The appellant did not file a response to the review, but filed written submissions. Upon review of the same, the trial court



- delivered a ruling on 5th March 2024, allowing the review, on grounds that the respondent had provided evidence that the appellant owed him Kshs. 138,580.00, and not Kshs. 38,580.00 as earlier pronounced by the court. It was noted that that amount had not been challenged by the appellant.
5. The appeal arises from the determination of 5th March 2024. The memorandum of appeal is dated 11th March 2024. The appellant avers that the orders were made without considering the defence evidence, the appellant had not been served with the handwritten application for review, the evidence was not subjected to cross-examination, there was an error in holding that the provisions of the Civil Procedure Rules on review did not apply, disregarding the evidence on the intentions and conduct of the parties, and enhancing the judgement figure without hearing the appellant.
 6. Directions were given on 18th December 2024, for canvassing the appeal by written submissions. The only submissions that I see, in the record, were filed by the respondent. I have read them and noted the arguments made.
 7. The appellant argues that he was not heard before the decision of 8th March 2024. That argument is not borne out by the record. The trial court initially acted on the handwritten application for review by the respondent on 3rd January 2024, when it delivered a ruling allowing that review. The appellant was aggrieved by that, and filed an application dated 22nd January 2024. That application was heard, on 1st February 2024, in the absence of the respondent. The Advocate, who appeared for the appellant, submitted extensively. A ruling was delivered the same day, vacating the orders of 3rd January 2024, and allowing time to the appellant to file a response to that handwritten application for review. The review application was fixed for hearing on 22nd February 2024.
 8. On 22nd February 2024, both parties attended court. The appellant asked for 3 days to file written submissions. That request was allowed, and ruling was reserved for 5th March 2024. In the ruling delivered on 5th March 2024, it was noted that the appellant did not file a response, to the review application, despite being given time to, and that he had instead opted to file written submissions, where he argued that the threshold under order 45 rule 1 of the Civil Procedure Rules had not been attained.
 9. Whereas the initial review order of 3rd January 2024 was without input from the appellant, that of 5th March 2024 was made after he had been heard. He was heard when he argued for the setting aside of the order of 3rd January 2024, and again when he filed submissions, following the directions of 22nd February 2024. Making submissions, whether orally or in writing, is a form of being heard. There can be no merit to the claim that the appellant was condemned unheard.
 10. The Small Claims Court does have power to review its decisions. That is provided for under section 41 of the *Small Claims Court Act*, Cap 10A, Laws of Kenya. The court can proceed on application by an aggrieved party or on its own motion, for that provision says, “An Adjudicator may, on application by any aggrieved party or on his or her own motion, review any order of the Court ...” So, unlike under Order 45 rule 1 of the Civil Procedure Rules, where review must be on application, under the *Small Claims Court Act*, the court can act suo moto.
 11. Section 41 does not provide for a procedure, but the Small Claims Court Rules do, at Rule 29. Review is done at the request of the party, either orally in court or “in writing addressed to the Court and served on all parties to the proceedings,” according to Rule 29(2). The form of the request in writing is not specified, but it could be by a formal application, or by ordinary letter, addressed to the court. Rule 29(1) sets out the grounds upon which review may be sought, “an error apparent on the face of the record” or “a clerical or arithmetical mistake.”



12. On the submission that the review was not merited, I note that the claim was for Kshs. 138,580.00. The court entered judgement erroneously for Kshs. 38,580.00, instead of the Kshs. 138,580.00 pleaded in the statement of claim. Review merely seeks to correct errors or mistakes in the face of a court order. There was such an error, both on the face of the record and of a clerical nature, and the review orders were meant to correct that.
13. Regarding applicability of the Civil Procedure Rules to the process at the Small Claims Court, the answer would lie with the provisions of the *Small Claims Court Act*. Section 17 provides that “... the Court shall have control of its own procedure in the determination of claims before it and, in the exercise of that control, the Court shall have regard to the principles of natural justice.”
14. That provision does not tie the Small Claims Court to the *Civil Procedure Act*, Cap 21, Laws of Kenya, or the Rules made under it. The *Small Claims Court Act*, and the Rules made under it, is a complete code of procedure, which does not require fallback to the *Civil Procedure Act* and its Rules, except in instances where the *Small Claims Court Act* or its Rules, specifically provides that the *Civil Procedure Act* and its Rules apply, such as at section 30 of the *Small Claims Court Act*, with respect to appeals.
15. On disregarding the evidence adduced by the parties on their intentions and their conduct, I note that that was dealt with in the judgement delivered on 14th December 2023. The appeal herein is not on that judgement. It is on the ruling of 5th March 2024, on review of the said judgement, with respect to the figures, but not on the intentions or conduct of the parties. If the appellant desired to have the appellate court address the matter of how the trial court navigated around the evidence, on the intentions and conduct of the parties, then he ought to have appealed against the judgement of 14th December 2023. Those issues are not before me.
16. Overall, I do not find merit in the appeal herein, and I hereby dismiss it, with costs. The original trial court records, in Busia SCCC No. E001 of 2023, shall be returned to the relevant registry, and the appeal file herein shall be closed. Orders accordingly.

DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 21ST DAY OF MARCH 2025.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Dr. Elizabeth Anindo Mwanza, the respondent, in person.

Advocates

Mr. Barasa, instructed by BM Ouma & Company, Advocates for the appellant.

