



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muriithi v Republic (Criminal Appeal E009 of 2024)  
[2025] KEHC 4470 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4470 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E009 OF 2024**

**DR KAVEDZA, J**

**APRIL 8, 2025**

**BETWEEN**

**DR KINYUA MURIITHI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The appellant was charged and after a full trial convicted for the offence of carrying on the business of a Pharmacist in premises not registered by the Pharmacy and Poisons (4) Board C/S to Section 23(1) as read with Section 23 (6) of the *Pharmacy and Poisons Act*. He was sentenced to serve three (3) years imprisonment by the trial court. His appeal this court on conviction was dismissed but partially allowed on sentence. This court substituted the sentence of three years with a fine of Kshs. 20,000 in default to serve 3 months imprisonment.
2. The applicant filed a notice of motion dated 6th June 2024 seeking a review of this court's decision. The application is supported by an affidavit sworn on the same date. The applicant argues that the court made an error apparent on the face of the record by holding that the Certificate of Registration for Watson Pharmacy's premises had expired at the end of 2017. He contends that Section 23 of the *Pharmacy and Poisons Act* does not provide for expiration of such certificates. Instead, it sets out only two circumstances under which a certificate becomes void: upon change of ownership or if the premises become unsuitable for pharmacy business.
3. The applicant further asserts that the court failed to consider submissions by the respondent, which emphasized that the law does not require annual renewal of registration certificates. He maintains that the statutory registration fee remains Kshs. 100 as set by Parliament, and that the lower court correctly found this to be the applicable amount. However, this court erred by upholding the Pharmacy and Poisons Board's unilateral increase of the fee to Kshs. 10,000, an action the applicant claims was arbitrary and unlawful.



4. The applicant argues that this constituted a mistake or error of law apparent on the face of the record, and he therefore seeks a review of the decision pursuant to the applicable provisions of the Civil Procedure Rules. He urges the court to correct the error and set aside the finding that supported the revised fee.
5. The application before this court was canvassed by way of written submissions, which have been duly considered in their entirety. The issue for determination is whether the applicant should be granted the orders of review sought, specifically in relation to the alleged error in the court's previous decision.
6. The applicant submits that the court erred in failing to interpret or pronounce itself on the critical issue of whether the law mandates the annual renewal of the Certificate of Registration for premises or whether such certificates are issued once and remain valid indefinitely. The applicant further contends that the court made a significant error of law, one that is plainly evident and should be rectified by way of review.
7. It is important to note that in the criminal justice system, the primary duty of the court is not to resolve every issue raised by the parties, but rather to determine whether the prosecution has proved its case beyond a reasonable doubt. In this matter, the issue on appeal was whether the lower court had made the correct determination based on the evidence presented, and whether the conviction was warranted in light of that evidence. The applicant seeks to revisit this issue through a review, claiming that an error was made regarding a substantial point of law.
8. Upon reviewing the record, this court finds that it duly analysed the evidence before it and arrived at a conclusion that the prosecution had proved its case beyond reasonable doubt. Furthermore, the evidence presented in the trial was deemed sufficient to warrant the conviction. As such, there is no substantive error on this point that would justify a review of the decision. The applicant's claim of an error of law is unfounded and does not meet the legal threshold for a review.
9. Moreover, it is the finding of this court that no substantial error of law was made in its analysis of the evidence, as alleged by the applicant. The court's decision was based on a thorough and reasoned examination of the facts presented during the trial, and there is no indication that this process was flawed or legally incorrect.
10. The legal standard for granting a review of a decision is that the error alleged must be "apparent on the face of the record," as held in the case of *Chandrakhant Joshibhai Patel v R* [2004] TLR 218. In that case, it was 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.”
11. In this case, the applicant's assertion of an error is not a matter of an obvious or patent mistake but one that is open to interpretation and may require detailed legal analysis to determine.
12. In the present case, there is no error that is self-evident on the face of the record, as alleged by the applicant. The issue raised by the applicant pertains to the interpretation of the law, which is not a matter that can be resolved through a review. The applicant's claim would, in fact, require an in-depth analysis of legal principles and statutory provisions, and such an issue cannot be determined by way of a review. The appropriate avenue for the applicant to raise this matter would be through an appeal to the Court of Appeal, where the legal questions can be addressed in a more comprehensive manner.



13. Consequently, the application for review must fail. The applicant has not demonstrated that the court's decision is tainted by an obvious or patent mistake of law. The issues raised are more appropriately suited for appellate consideration rather than review, and as such, the application dated 6<sup>th</sup> June 2024 is hereby dismissed.

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 8<sup>TH</sup> DAY OF APRIL 2025**

**D. KAVEDZA**

**JUDGE**

In the presence of:

Applicant Present

Mutuma for the Respondent

Tonny Court Assistant

