



**Patel & another v Race Auto Limited (Miscellaneous Application E779 of 2022)
[2025] KEHC 4671 (KLR) (Commercial and Tax) (10 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4671 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E779 OF 2022**

PM MULWA, J

APRIL 10, 2025

BETWEEN

KANJI KUNVERJI PATEL 1ST APPLICANT

DHANBHAI KANJI KUNVERJI 2ND APPLICANT

AND

RACE AUTO LIMITED RESPONDENT

RULING

1. Before court is the applicants' motion dated 5th September 2024, brought pursuant to Order 45 rule 1 and 2 of the *Civil Procedure Rules*, sections 1B, 3A and 80 of the *Civil Procedure Act* and Article 159 of the *Constitution*. The applicant seeks orders that:
 - i. Spent
 - ii. The Honourable Court be pleased to review, vary and/or set aside the ruling of 15th August 2024, and allow the applicants' application of 1st November 2022
 - iii. Costs of this application be borne by the respondent
 - iv. Such other and/or orders as the Court may deem just and expedient.
2. The motion is supported by the grounds listed on the face of it and the affidavit of Hasmita Patel, sworn on 5th September 2024.
3. The applicants' argument is that their application dated 1st November 2022 was dismissed on account of lack of an arbitration clause in the lease agreement produced as exhibit, a situation which was occasioned by the copying of only odd pages of the document during the lodging of the motion. And that a copy of the complete lease agreement, which was never in contention has now been availed.



4. The applicants contend that there was therefore an error on the face of the record and the dismissal of the earlier application is highly prejudicial to them and hence the orders sought in the instant application.
5. The respondent opposed the motion vide a replying affidavit dated 24th October 2024 wherein it is averred that the application does not meet the threshold for grant of review as it is not grounded under sections 80 and 99 of the *Civil Procedure Act* and that there is no clerical or arithmetical mistake in the ruling or error arising therefrom.
6. It is the respondent's assertion that the attached lease agreements still have the anomaly of being dated 2018 on the cover page, 2017 in the second page and a commencement date of 2015 upon which the ruling was premised.
7. The respondent further avers that the ground for review being an error apparent on the face of the record is misconceived as it is only limited to errors by the court and not by a party to the suit, and therefore pray for the motion to be dismissed.

Determination

8. I have considered the motion, the replying affidavit and the written submissions by both parties. The issue that commend for determination is whether the court should review, vary or set aside the ruling of 15th August 2024 and allow the applicants' application dated 1st November 2022.
9. Section 80 of the *Civil Procedure Act* gives the court the power to make an order for review upon application by a person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed by the Act. And Order 45 rule 1 of the Civil Procedure Rules goes on to add that, the action of review may be prompted by the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made on account of some mistake or error apparent on the face of the record, or for any other sufficient reason.
10. Mativo J. (as he then was) in *Bethwel Omondi Okal v Managing Director KPLC and Co* [2017] eKLR, upholding the finding in *National Bank of Kenya Ltd v Ndungu Njau* [1996] KLR 469 (CAK) 381 held thus:

“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 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.”
11. The applicants have hinged their application on the contention that there is an arbitral clause in the lease agreement as evidenced by annexure HP 4, 5 and 6. And that inadvertently one side of the lease agreement had been scanned thus exhibiting only odd pages and leaving out the even pages. And further that a complete lease agreement is now annexed as HP 6 with the arbitration clause 3.9.
12. I have had the chance to look at annexure HP 6. And as correctly submitted by Counsel for the respondent, other than the missing arbitral clause in the lease agreement annexed to the application of 1st November 2022, the court had noted other peculiar features of the lease agreement. I would



not want to restate my finding in the ruling of 15th August 2024, but suffice it to state that the noted anomalies are still evident in annexure HP 6 and may require a process of explanations to reach a certain view. In which case therefore, that cannot be an error apparent on the face of the record.

13. In whole, I find and hold that the applicants' motion dated 5th September 2024 does not meet the threshold for review and setting aside of the orders of the court. It is dismissed with costs.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 10TH DAY OF APRIL 2025.

PETER M. MULWA

JUDGE

In the presence of:

Ms. Kaggia h/b for Anyango for applicants

Ms. Kerubo h/b for Ms. Omari for respondent

Court Assistant: Kadzo

