



**Bluaxis Construction Limited v Kenya National Highways Authority (Constitutional  
Petition E001 of 2024) [2025] KEHC 5688 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5688 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CONSTITUTIONAL PETITION E001 OF 2024**

**FN MUCHEMI, J**

**MAY 8, 2025**

**IN THE MATTER OF AN APPLICATION FOR  
ORDERS OF CERTIORARI & PROHIBITION**

**AND**

**IN THE MATTER OF ARTICLES 19, 21, 22, 23, 27, 31, 40, 64 & 259 OF THE  
CONSTITUTION OF KENYA 2010, THE ENFORCEMENT OF THE BILL OF RIGHTS**

**AND**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS AND  
FUNDAMENTAL FREEDOMS UNDER ARTICLE 19, 20, 21, 22, 23,  
31, 40(1), 40(3), 64 & 259 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF  
RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE & PROCEDURE RULES**

**AND**

**IN THE MATTER OF SECTION 339 OF THE PENAL CODE, CAP 63 LAWS OF KENYA**

**BETWEEN**

**BLUAXIS CONSTRUCTION LIMITED ..... PETITIONER**

**AND**

**KENYA NATIONAL HIGHWAYS AUTHORITY ..... RESPONDENT**



## RULING

### Brief Facts

1. The application for determination is dated 22<sup>nd</sup> October 2024 seeking for orders of review of the judgement delivered on 30<sup>th</sup> July 2024. The applicant further seeks for the court to retract the general damages awarded to the petitioner of Kshs. 350,000/- and substitute it with the sum of Kshs. 500,000/-. Additionally, the applicant seeks for orders of setting aside of the orders issued after the delivery of the judgment on 30<sup>th</sup> July 2024 to the effect that the sum of Kshs. 1,000,000/- deposited in court by the petitioner on 2<sup>nd</sup> February 2024 be released to the respondent.
2. The respondent filed a replying affidavit dated 18<sup>th</sup> November 2024 in opposition to the application.

### The Petitioner/Applicant's Case

3. The applicant states that judgment in the matter was delivered on 30<sup>th</sup> July 2024 whereby the court found that it was entitled to general damages for violations of its constitutional right to privacy assessed at Kshs. 500,000/-. However, in its final orders, the honourable court awarded the applicant Kshs. 350,000/- contradicting its earlier assessment which is an error apparent on the face of the record.
4. The applicant further states that in making its final orders, the court was clear that it was sitting as a constitutional court and awarded it damages for violation of its constitutional rights. However, the court ordered that the sum of Kshs 1 million deposited in court on 2/2/2024 be released to the respondent thereby contradicting its earlier finding and erroneously assuming the dispute resolution mechanism role outlined under the East African Community Vehicle Load Control Act, 2016. The applicant argues that the dispute in court was not whether the suit motor vehicle was overloaded but rather whether its constitutional rights were violated and thus it was not within the remit of the court to impose a fine on the applicant without a hearing under the East African Community Vehicle Load Control Act, 2016 (EACVLCA).
5. The applicant argues that the respondent did not lodge a cross petition against it and an order for release of the sums deposited in court on 2/2/2024 was made per incuriam. The applicant states that the sums deposited in court on 2/2/2024 should have been released unconditionally to it after the finding that their constitutional rights were violated by the respondent.
6. The applicant states that the respondent should follow the due process laid under the EACVLCA to impose or recover any alleged overloading fees they may wish to impose of it without piggybacking on the instant constitutional proceedings. Similarly the applicant states that it is enjoined to follow the due process of commencing execution proceedings to recover the damages awarded to it by the court without having the same set off from the sums it deposited in court on 2/2/2024.
7. The applicant argues that the order made after the judgment was delivered on 30/7/2024 had the effect of completely watering down the award made in its favour after a full hearing of both parties and condemned it unheard without the benefit of a hearing using the dispute resolution mechanisms laid down under the EACVLCA.
8. The applicant states that the court has the power and discretion to grant the prayers sought where sufficient reason is shown warranting the review of its judgment. The applicant avers that the application has been brought timeously and without unreasonable delay.



9. The applicant states that no prejudice shall be occasioned to the respondent if the application is allowed as they did not file a cross petition and they will equally have an opportunity to ventilate any dispute they may have regarding the alleged overloading under the dispute resolution mechanism laid down under EACVLCA.

### **The Respondent's Case**

10. The respondent states that the deponent to the supporting affidavit avers that he is a director at the petitioner and that he is duly authorised to depose the affidavit. However, there is no evidence of the alleged directorship/authorization has been attached.
11. The respondent refers to Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules and submits that the applicant has not demonstrated that the award of Kshs. 350,000/- arose from the discovery of new and important matter or was on account of some mistake or error apparent on the face of the record and was as a consequence of any other sufficient reason. The respondent argues that the alleged error has not been substantiated as there is no other finding in the entire judgment as to the petitioner's entitlement to general damages of Kshs. 500,000/-.
12. The respondent states that the order for the release of the deposit of Kshs. 1 million was valid, correct and proper. Furthermore, the respondent argues that the release of the said funds does not fall within the scope of review under Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules.
13. The respondent states that it remains entitled to the payment of the overloading fees due and owing to it per the weighbridge ticket, the overloading fees assessed and computed was Kshs. 1,077,612.145/-.Furthermore, since the motor vehicle was released to the petitioner, the authority would be entitled to the Kshs. 1 million deposit into court made by the petitioner on 2/2/2024. The respondent argues that the petitioner cannot and ought not to be allowed to approbate and reprobate at the same time. The petitioner cannot and ought not to be allowed to enjoy the benefit and use of the motor vehicle and deposited funds if released back to it since the former was conditional upon the satisfaction of the latter.
14. The respondent argues that the order of 24<sup>th</sup> January 2024 has not been varied, set aside or discharged on review or appeal by a court of competent jurisdiction.
15. The respondent states that the order for the release of the deposited funds to them was in exercise of the court's inherent power and the order was not in exercise of the dispute resolution mechanisms under the EACVLCA as alleged. Further, the order for release of the deposited funds did not contradict the court's previous order made on 24<sup>th</sup> January 2024. The said order of 24<sup>th</sup> January 2024 was clear that it would be in force pending the hearing and determination of the petition and that the release of the motor vehicle was conditional upon the deposit of Kshs 1 million by the respondent. Both parties complied with their respective obligations thereunder. Thus, the applicant has not explained or demonstrated the alleged contradiction.
16. The respondent argues that the petitioner is vague and ambiguous as to which provisions of the EACVLCA that the court applied for purposes of the release of the deposited funds which were deposited pursuant to the court's directions and not pursuant to any provision of the said Act.
17. The respondent argues that as at the date of filing the petition, the motor vehicle was in its lawful custody and detainment as per the procedure under the EACVLCA and the Regulations. The recovery of the overloading fees as per the provisions of the EACVLCA and the Regulations. Notwithstanding, the respondent states that in its written submissions in further response to the petition, made its



- arguments in support of the release of the deposited funds to it, as an additional order to the dismissal of the petition but which dismissal was not granted. Thus, there was no obligation for them to have filed a cross petition to secure the release of those funds.
18. The respondent argues that no mechanism is available under the EACVLCA or the Regulations for them to pursue the overloading fees because the motor vehicle is already in possession of the petitioner. No mechanism is available under the said Act or Regulations for them to pursue fees once the motor vehicle is out of its custody and detainment.
  19. The respondent states that the petitioner is entitled to execute for the damages of Kshs. 350,000/- as awarded and the execution of the said amount is separate and distinct and has no nexus with the order for the release of the Kshs. 1 million. Thus there is no basis for the petitioner to allege that the damages amount are to be set off from the deposited funds. The respondent avers that the consideration for the grant of the damages and release of funds were distinct and have no nexus in so far as for the petitioner to now claim that an order for the release of the deposited funds to it was consequential to the finding on the breach of its constitutional rights.
  20. The respondent avers that no prejudice shall be suffered by the petitioner who already has possession and use of the motor vehicle released to it on 14<sup>th</sup> February 2024 without settlement of the fully assessed overloading fees of Kshs. 1,077,612.145/-. The respondent further avers that it shall suffer substantial prejudice should the orders be granted as it shall be condemned to pay significantly higher damages contrary to the sum awarded in paragraph 112(b) of the judgment. Furthermore, the respondent states that it shall unfairly be deprived of the deposited funds correctly owed to it upon its compliance with the conditional order for the release of the motor vehicle to the petitioner.
  21. The applicant filed a Supplementary Affidavit dated 17<sup>th</sup> February 2025 and reiterates the contents of the supporting affidavit. The applicant avers that *the Constitution* in Article 2(4) is clear that any act or omission done in contravention of *the Constitution* is invalid. Thus if an act is void, then it is in law a nullity and it is not only bad, but incurably bad. Consequently, having established and held that the respondent violated the petitioner's constitutional privacy and property rights by breaking and entering its motor vehicle, everything that was done by the respondent after violation of its rights was invalid, incurably bad in law and a nullity.
  22. The applicant argues that the respondent cannot be heard to state that it has no way of recovering the fine it imposed on it after violating its constitutional right to privacy and yet it is a legal entity clothed with powers to sue and be sued.
  23. The application was disposed of by way of written submissions.

### **The Petitioner/Applicant's Submissions**

24. The applicant reiterates the averments of its affidavits and relies on Section 99 and 100 of the *Civil Procedure Act*, Order 45 Rule 1 of the Civil Procedure Rules and the cases of *Muyodi vs Industrial and Commercial Development Corporation & Another* [2006] 1 EA 243; *Chandrakant Joshibhai Patel vs R* [2004] TLR 218; *Aribam Tuleshwar Sharma vs Aribam Pishak* 1 (1979) 4 SCC 389; AIR 1979 SC 1047; *Attorney General & O'rs vs Boniface Byanyima* (HCMA No. 1789 of 2000); *National Bank of Kenya Ltd vs Ndungu Njau and Pancras T. Swai vs Kenya Breweries Ltd* (2014) eKLR and submits that the arithmetic error at paragraphs 105 and 112(b) of the judgment is one that would require the court to correct and calls for the review of the judgment. It is apparent that the final orders of the court where it awarded the sum of Kshs. 350,000/- contradict its earlier assessment and disposition of Kshs. 500,000 contained in paragraph 105 of the judgement which is an error on the face of the record.



25. The applicant refers to Article 2(4) of *the Constitution* and the cases of Suleiman Said Shabhal vs Independent Electoral & Boundaries Commission & 3 Others [2014] eKLR and KO vs Republic (Criminal Appeal E026 of 2021) [2023] KEHC 18310 (KLR) (2 June 2023) (Judgment) and submits that the actions of the respondent having been found to have violated its constitutional rights, anything they purport to do thereafter such as driving the vehicle to the weigh bridge, weighing it and imposing a fine are well acts flowing from an unconstitutional act hence a nullity.
26. The applicant relies on the case of Kenya National Highways Authority vs Geoffrey Muga [2021] eKLR and submits that in light of Section 15(1)(a)(c)(h) of the EACVLC it was a misapprehension of the law for the court to order that the security deposited by it be released to the respondent and be used to settle the fine imposed on it.
27. The applicant further relies on Article 50(4) of *the Constitution* and submits that evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence had the impact of rendering the trial unfair or otherwise detrimental to the administration of justice. Thus, even if its vehicle was overloaded, the manner in which the respondent obtained such evidence of overloading violated its constitutional right to privacy and property thus inadmissible.

### **The Respondent's Submissions**

28. The respondent relies on Section 80 of the *Civil Procedure Act*, Order 45 Rule 1 of the Civil Procedure Rules and the cases of Hosea Nyandika Mosagwe & 2 Others vs County Government of Nyamira [2022] eKLR and Josiah vs Nyaga (Civil Appeal 34 of 2021) [2023] KEHC 2054 (KLR) and submits that applicant has not shown that the award of Kshs. 350,000/- made to them arose from discovery of new and important matter or evidence which was not within their knowledge, was a consequence of any other sufficient reason or was an error apparent on the face of the record. The respondent further relies on the cases of Nyamogo & Nyamogo vs Kogo [2001] EA 173 and National Bank of Kenya Limited vs Ndungu Njau [1997] eKLR and submits that the alleged error in the judgment relates to the quantum of general damages the applicant is entitled to in the petition and does not fall within the scope of a clerical or arithmetic mistake under Section 99 of the *Civil procedure Act* as outlined by the applicant.
29. The respondent further argues that the award of damages is not an error apparent on the face of the record as evidenced by the applicant's elaborate and detailed arguments in support as reflected in its application, supporting affidavit, supplementary affidavit and submissions. The respondent submits that the arguments raised show that the applicant is disputing the quantum of damages, in essence that a wrong conclusion was reached by the court to award Kshs. 350,000/-. Thus the same is a ground for appeal and not a basis for review. To support its contentions, the respondent relies on the cases of Pancras T. Swai vs Kenya Breweries Limited [2014] eKLR and Re Estate of Lesinko Sokorte Kirayio (Deceased) [2017] eKLR.
30. The respondent submits that the release of motor vehicle registration number KDE 210Q was made following the order of the court made on 24<sup>th</sup> January 2024. The release was conditional upon the applicant's deposit into court of the sum of Kshs. 1 million which was done on 2<sup>nd</sup> February 2024. The respondent argues that the order for the release of the said deposit made after the judgment was proper and remains valid and correct.
31. The respondent relies on the case of Hosea Nyandika Mosagwe & 2 Others vs County Government of Nyamira [2022] eKLR and argues that the prayer ought to fail as the applicant has failed to attach a written order containing the release of the funds to the respondent. The respondent further argues



that the order of release of the funds in being beyond the scope of the judgment falls beyond the scope of the instant application and as such cannot be subject to review through the application.

32. The respondent further argues that the order for release of the deposited funds does not fall within the scope of review under Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules. The respondent submits that it remains entitled to the payment of the overloading fees due and owing to it. Furthermore, the order of 24<sup>th</sup> January 2024 for the conditional release of the motor vehicle has never been varied, set aside or discharged on review or appeal by a court of competent jurisdiction. The respondent submits that order for release of the deposited funds was in exercise of the court's inherent power and not in exercise of the dispute resolution mechanisms under the EACVLCA as alleged. Furthermore, the respondent argues that the order for release of the deposited funds did not contradict the court's previous orders made on 24<sup>th</sup> January 2024.
33. The respondent submits that although the applicant alleges that the court in making the order for the release of the deposited funds assumed the dispute resolution mechanism role outlined in the EACVLCA, the applicant is vague and ambiguous as to which provisions of the Act the court applied for purposes of the release of the deposited funds. The respondent further submits that the issue of overloading was well and properly placed before the court for judicial consideration and determination within the petition proceedings and the applicant has not sought a review of the findings.
34. The respondent submits that the court was called upon to determine an award of damages upon establishing that the applicant's rights under *the Constitution* were violated which the court did and therefore no basis has been laid to demonstrate that the applicant was entitled to the grant of an additional relief in the form of an order of the release of those funds which were deposited in the course of the petition proceedings to it. The respondent further argues that no mechanism is available under the EACVLCA and the Regulations for it to pursue overloading fees as the subject motor vehicle is already in the possession of the applicant and therefore out of its custody and detainment.
35. The respondent submits that the applicant is entitled to proceed and execute for the damages of Kshs. 350,000/- and the said execution is separate, distinct and has no nexus with the order of the release of Kshs. 1 million made in its favour. Thus the respondent argues that there is no basis for the applicant to allege that the damages amount are to be set off from the deposited funds. Furthermore, the order for the release of the deposited funds did not water down the award of damages as the award of damages was premised on the finding of the violation of the applicant's rights whereas the release of funds was made with compliance to the release of the applicant's motor vehicle.
36. The respondent relies on the case of *Haraf Traders Limited vs Narok County Government* [2022] eKLR and submits that the applicant is not entitled to any costs of the application.

### **Issues for determination**

37. The main issues for determination are:-
  - a. Whether the application is fatally defective for want of filing a resolution authorizing Joseph Kinyua Kamau to plead on behalf of the applicant.
  - b. Whether the orders sought for review and setting aside are warranted.



## The Law

### **Whether the application is fatally defective for want of filing a resolution authorizing Joseph Kinyua Kamau to plead on behalf of the applicant.**

38. The respondent is seeking for the application to be struck out on the ground that the applicant did not file a resolution or authority authorizing Joseph Kinyua Kamau, a director of the petitioner to swear the affidavits on the petitioner's behalf.
39. The applicant acknowledged that in their Supplementary affidavit dated 17<sup>th</sup> February 2025, the applicant annexed an authority granted to Joseph Kinyua Kamau to act on behalf of the petitioner thereby fixing this anomaly.
40. Courts have consistently held that, even where such a resolution is a requirement, the board resolution may be filed at any time before a suit is fixed for hearing. In the case of *Leo Investments Ltd vs Trident Insurance Company Ltd (2014) eKLR* where the court stated:-

....such a resolution by the Board of Directors of a company may be filed at any time before the suit is fixed for hearing as there is no requirement that the same be filed at the same time as the suit. Its absence is, therefore not fatal to the suit.

41. The Court of Appeal in the case of *Spire Bank Limited vs Land Registrar & 2 Others [2019] eKLR* stated as follows:-

It is essential to appreciate that the intention behind Order 4 Rule 1 (4) was to safeguard the corporate entity by ensuring that only an authorized officer could institute proceedings on its behalf. This was to address the mischief of unauthorized persons instituting proceedings on behalf of corporations, and obtaining fraudulent or unwarranted orders from the court. The company's seal that is affixed under the hand of the directors ensured that they were aware of, and had authorized such proceedings together with the persons enlisted to conduct them. And where evidence was produced to demonstrate that a person was unauthorized, the burden shifted to such officer to demonstrate that they were authorized under the company seal. With this in mind, we dare say that the provision was not intended to be utilized as a procedural technicality to strike out suits, particularly where no evidence was produced to demonstrate that the officer was unauthorized.

42. From the foregoing, it is clear that the deponent produced the authority permitting him to swear the affidavits on behalf of the petitioner. And was therefore properly authorised to swear the affidavits in this petition on behalf of the petitioner date 11<sup>th</sup> October 2024 which was attached to the Supplementary affidavit. This court has ruled on this issue before and it ought not to arise every time a new application is filed.

### **Whether the orders sought for review and setting aside are warranted.**

43. Order 45 of the Civil Procedure Code sets out the parameters for an application for review as follows:-

#### Rule 1

(1) 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 order made or made the order without unreasonable delay.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case which he applies for the review.

44. Order 45 therefore, provides for three circumstances under which an order for review can be made. The applicant must demonstrate to the court that there has been 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. Secondly, the applicant must demonstrate to the court that there has some mistake or error apparent on the face of the record. The third ground for review is worded broadly; an application for review can be made for any other sufficient reason.

45. The applicant grounded its application on error apparent on the face of the record and sufficient reason. On the issue of any error apparent on the face of the record, the Court of Appeal in the case of *Muyodi vs Industrial and Commercial Development Corporation & Another* (2006) 1 EA 243, considered what constitutes a mistake or error apparent on the face of the record, and stated as follows:-

In *Nyamogo & Nyamogo vs Kogo* (2001) EA 174 this Court said that an error on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by long drawn process of reasoning or on points where there may be conceivably be two opinions, can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error or wrong view is certainly no ground for a review although it may be for an appeal.

46. Similarly in *National Bank of Kenya Ltd vs Ndungu Njau* Civil Appeal No. 211 of 1996 (UR) the Court of Appeal held:-

“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.”



47. Additionally in Paul Mwaniki vs National Hospital Insurance Fund Board of Management [2020] eKLR the court stated:-

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 provisions of law cannot be a ground for review.

48. The court went on to say:-

The term ‘mistake or error apparent’ by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for purposes of Order 45 Rule 1 of the Civil Procedure Rules and Section 80 of the Act. Put it differently an order, decision, or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision. The wisdom flowing from jurisprudence on this subject is that no error can be said to be apparent on the face of the record if it is not manifest or self-evident and requires an examination or argument to establish it.

49. Evidently, it is clear from the foregoing decisions that the error ought to be so glaring that there can possibly be no debate about it. An error which has to be established by a long drawn out process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. The error referred to by the petitioner is one that is apparent on the face of the record in that the court in its judgment in paragraph 105 awarded Kshs. 500,000/- as general damages. In the final orders in paragraph 112 (b) the court indicated the general damages as Kshs. 350,000/- which was not correct. It is my considered view that the sum indicated a Ksh.350,000 is an arithmetic error which the court has discretion to amend under Section 99 of the *Civil Procedure Act*. Thus, the court amends paragraph 112(b) of the judgment for general damages to read Kshs. 500,000/-.

50. The applicant has raised the ground of ‘for any other sufficient reason in regard to release of the sum of Ksh.1,000,000/=. The phrase ‘any other sufficient reason’ was illuminated in the case of Republic vs Cabinet Secretary for Interior and Co-ordination of National Government ex parte Abullahi Said [2019] eKLR:-

A court can review a judgment for any other sufficient reason. In the case of Sadar Mohammed vs Charan Singh & Another {1963} EA 557 it was held that any other sufficient reason for the purposes of review refers to grounds analogous to the other two (for example error on the face of the record and discovery of new matter.) Mulla in the Code of Civil Procedure (writing on Order 47 Rule 1 of the Civil Procedure Code of India), the equivalent of our Order 45 Rule 1, states that the expression, ‘any other sufficient reason’ means a reason sufficiently analogous to those specified in the rule. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out.....would amount to an abuse of the liberty given to the tribunal under the Act to review its judgment.



I also find useful guidance in *Tokesi Mombili & Others vs Simion Litsanga* [2004] eKLR where the Court of Appeal held as follows:-

In order to obtain a review an applicant has to show to the satisfaction of the court that there has been discovery of new and important matter or evidence which was not within his knowledge or could not be produced at the time when the order to be reviewed was made. An applicant may have to show that there was a mistake or error apparent on the face of the record or for any other sufficient reason.

Where the application is based on sufficient reason it is for the court to exercise its discretion.

51. In regard to release of security to the respondent the order was made on 30/07/2024 after delivery of the court's judgment. The application was made by the counsel for the respondent orally in court and was not opposed by the counsel for the petitioner who was present in court.
52. In order to determine the sue raised by the petitioner that the court was wrong in that it ought to have released the funds to the petitioner who had made the deposit, it is important to examine the genesis of the said deposit.
53. This matter is a constitutional petition from the word go. The petitioner upon filing this petition applied formally for release of its motor vehicle which had been detained by the respondent for overloading in its application dated 3<sup>rd</sup> January 2024. The application was opposed through a replying affidavit by the respondent. A further affidavit was filed with leave of the court by the petitioner. The court first gave interim orders of release without any condition pending hearing of the application inter parties which order was not obeyed by the respondent who argued that it would suffer from such unconditional release if the fine of Ksh.1,077,612/- was not paid by the petitioner.
54. The petitioner argued that the said fine was based on an illegality and the petitioner was not bound to pay the same. The respondent then softened its stand and said that should the amount for fine be deposited in court then it would not object to the release of the petitioner's vehicle.  
  
In its ruling delivered on 24/01/2024, this court gave orders for release of the vehicle pending hearing and determination of the petition on condition that Ksh.1,000,000 was deposited in court by the petitioner within twenty-one (21) days. This condition was complied with following which the vehicle was released.
55. Judgment in this petition was delivered on 30/07/2025. Thereafter the parties by consent agreed on 30 days stay of execution. The court then ordered release of the amount deposited in court by the petitioner to the respondent.
56. From the brief background, it is clear that the amount deposited in court was security for the fine charged for overloading of the vehicle which was imposed on the petitioner by the respondent provided by the law. This is clear from the court's proceedings. This court by ordering deposit of the said sum and releasing it to the respondent was within its ambit as a Constitutional court.
57. It is important to note that the deposit and the release orders were not part of the judgment of the court but orders to ensure security of the fine already imposed by the respondent. Neither did the court in its judgment find that the petitioner had overloaded its vehicle because this was not an issue in this petition. The fine had already been imposed by the respondent under its mandate before this petition was filed. A ticket for payment had been issued which was annexed to the replying affidavit. It is my considered view, this court acted within the law in making the orders for release. The applicant took three months to file this application which renders the motion an afterthought



57. In conclusion, I find that the prayer for setting aside the orders of release of the funds made on 30/07/2024 has not merit and it is hereby declined.

This application dated 22<sup>nd</sup> October 2024 is only partly successful. Each party shall meet their own costs of this motion.

58. It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 8<sup>TH</sup> DAY OF MAY 2025.**

**F. MUCHEMI**

**JUDGE**

