



REPUBLIC OF KENYA



Idris & another v Lime & another (Suing as the Legal Representatives of the Estate of Samson Ndunde Lime) (Civil Appeal 20 of 2022) [2025] KEHC 6720 (KLR) (22 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6720 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL 20 OF 2022
SC CHIRCHIR, J
MAY 22, 2025**

BETWEEN

MOHAMMED IDRIS 1ST APPELLANT

INIRIETA NALISI 2ND APPELLANT

AND

DORKA AJWANG LIME 1ST RESPONDENT

VIOLET SHIVOGO ANDESO 2ND RESPONDENT

**SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF SAMSON
NDUNDE LIME**

RULING

1. There are two Applications due for determination. Both are seeking for review of the judgment delivered on 26th May, 2023, by Justice Wananda J.R. The Appellants' application for review is dated 25th October, 2023. It seeks to review the judgment by correcting the arithmetical error as follows: "that the trial court's award of special damages at the sum of Kshs. 2,064,847/= is hereby reduced by deducting thereof the sum of Kshs. 1,724,347/= leaving a net award of Kshs. 340,500/=.
2. The application is brought pursuant to Order 45 Rule 1&2 and Order 51 Rule 10 of the Civil Procedure Rules and Sections 1A, 1B, 80 & 95 of the *Civil Procedure Act* and is supported by the annexed affidavit of Daniel Akwala Advocate. He deposes that, after re-evaluating the evidence on record and analyzing the submissions of the parties the Learned Judge at Paragraph 34 opined that the amount of Kshs. 1,724,347 be deducted from the aggregate amount of Kshs. 2,064,847 as there was no proof of the payment of ksh. 1,724,347. The Applicant points out that the balance therefore should have been ksh. 340, 500 not ksh. 1,392,700 stated by the Judge. He prays that this court corrects this error.



3. The respondent application for review is dated 4th September, 2023. It seeks for a review of the award on special damages by re – tabulation of costs of treatment as reflected on the receipts produced.
4. The application is supported by the annexed affidavit of Geoffrey O.Okoth Advocate. He states that judgment is based on discrepancies and lack of clarity on how the learned judge arrived at the figure for special damages against the receipts produced. He states that all the court needs to resolve the issue is a calculator to ascertain the correct figure.
5. The appellant has filed submissions which I have considered

Determination

6. Section 99 *Civil Procedure Act* provides; “Clerical or arithmetical mistakes in judgements, decrees or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of its own motion or on the application of any of the parties.”
7. In respect to the said error under paragraph 34 the Judge stated: “ In the circumstances, I find that the learned Magistrate erred in including the said sum of ksh. 1,724,347 as part of the aggregate special damages awarded at ksh. 2,064,847. What was produced in support of that amount was only an invoice with no receipt or any other acceptable evidence to prove payment. The amount of ksh.1,724,347 is therefore deducted from the aggregate amount of ksh. 2,064,847 awarded as special damages.”
8. However while making the final orders in paragraph 35 he stated:
 - “ 35 (i)The trial court award of special damages at the sum of ksh. 2,064,847 is hereby reduced by deducting thereof the sum of ksh. 1,724,347
 - (ii). Consequently the trial court’s award of special damages at ksh. 2064846 is hereby set aside and substituted with an award of ksh. 1,392,700. “
9. Thus a reading of paragraph 34 as read with 35(i) and 35(ii) of the judgment show that the error was arithmetic. A subtraction of 1,724,347 from ksh. 2,064,847 leaves a balance of ksh. 340,500 not what the Judge stated.
10. Thought the Appellant filed for review , am of the view that the error referred to was eligible for correction under section 99 of the *civil procedure Act*. Nevertheless the prayer is merited .
11. In regard to the respondent’s Application , I understand the respondent to be saying that the Judge arrived at a wrong figure on special damages and consequently there are sufficient grounds to review the judgement.
12. Review is founded on section 80 of the *civil procedure Act* and Order 45 of the civil procedure Rules. The grounds upon which a party may apply for review are provided for under order 45. It provides: “Any person considering himself aggrieved-
 - a. by a decree of 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 exercise of due diligence, was not within his knowledge or could not be procured 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 made the order without unreasonable delay.”

13. On paragraph 1 of page 3 of the judgment(page 72 of the record of Appeal)the trial magistrate had referred to the disputed invoice of ksh. 1,724, 347 and found it as a valid proof of loss , and having accepted the invoice arrived at the total of ks. 2,064,847 on special damages. It is the inclusion of this invoice amount that the Judge overruled on Appeal and consequently deducted from the figure of the total special damages .
14. If an error occurred at the time of adding up the figures in the receipts produced then , that error was not the work of the judge. It emanated from the trial court. However there was neither an attempt to seek for a review of the trial magistrate judgment nor a cross -Appeal against the award on special damages. It is too late for the Respondent to seek to correct the such error, if any, by this court. The respondent is in effect asking this court to review the judgment of the trial court , not the one by this court. Looked at differently, he is asking the court to address matters that had not arisen on Appeal. That prayer is not tenable
15. The respondent’s argument that the judge should have just ignored the invoice and simply add up the amounts in the receipt is to ignore the Appellant’s grounds of Appeal. The entire Appeal was about the invoice in question and that was what the Judge addressed himself to.
16. From the foregoing, the Appellant’s Application dated 25/10/2023 is allowed while the respondent’s dated 4/9/2023 id declined.
17. Each party to meet their own costs

DATED , SIGNED AND DELIVERED VIRTUALLY, AT ISIOLO THIS 22ND DAY OF MAY 2025

S. CHIRCHIR

JUDGE.

In the presence of :

Godwin Luyundi- Court Assistant.

Mr. Nanjala for Mr. Akwala for the Appellant

Mr. Nyamgweso for Mr. Ogolla for the Respondent.

