



**Mukui v Truckmart East Africa Limited (Civil Appeal  
520 of 2018) [2025] KEHC 12234 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 12234 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL APPEAL 520 OF 2018**

**TW CHERERE, J**

**MAY 8, 2025**

**BETWEEN**

**PETER KANYORO MUKUI ..... APPELLANT**

**AND**

**TRUCKMART EAST AFRICA LIMITED ..... RESPONDENT**

**RULING**

“Review is not a retreat from finality, but a safeguard against injustice. It is the court’s measured response to the unforeseen—to ensure that truth is not sacrificed at the altar of procedure.”

**Background**

1. By judgment delivered on 27<sup>th</sup> May 2024, this Court made the following orders:

Paragraph 34:

- a) The Respondent was directed to compensate the Appellant by fitting motor vehicle registration number KBU 027Z with the correct engine and entire transmission system for Model No. 2516
- b) The Appellant was awarded KES. 62,262 incurred in repairs to motor vehicle KBU 027Z
- c) Costs of the appeal were awarded to the Appellant
- d) The rest of the claim was dismissed for want of substantiation

**Application**

2. The Respondent filed a Notice of Motion dated 04<sup>th</sup> March 2025 under Order 45 Rule 1 of the Civil Procedure Rules and Section 3 and 80 of the *Civil Procedure Act* seeking:



- (1) Review of the judgment delivered on 27<sup>th</sup> May 2024
- (2) Setting aside of paragraph 34(a) of the said judgment
3. The application is supported by the affidavit of Carolle Maina, advocate, sworn on 03<sup>rd</sup> March 2025 and based on the following grounds:
  1. Discovery of new and important matter not within the Respondent's knowledge at the time of hearing and determination of the appeal;
  2. The Appellant is no longer the registered owner of motor vehicle registration number KBU 027Z;
  3. Paragraph 34(a) of the judgment is unenforceable in favour of the Appellant;
  4. Enforcement of the order would amount to fraud or unjust enrichment.
4. The Appellant opposed the application by way of two affidavits sworn on 02<sup>nd</sup> May 2025. In the first one by the Appellant, he avers that;1. The dispute between him and the Respondent was a damaged engine of motor vehicle registration number KBU 027Z;2. He sold the subject motor vehicle as scrap to Thomas Maitha as shown on sale agreement dated 10<sup>th</sup> April 2029.3. It was agreed between them that the purchaser would not rebuild the vehicle or sell it to a third party
5. In the second replying affidavit, Thomas Maitha avers that:1. He purchased the subject grounded motor vehicle from the Appellant on 10<sup>th</sup> April 2029.2. He later sold the chassis and engine block to one Stephen Mbutia3. He was left with the tipping body which he can rebuild by adding components to the engine block if it is availed

### **Issues for Determination**

6. I have considered the affidavit evidence on record and the judgment of the court delivered on 27<sup>th</sup> May 2024 and the issues arising for determination are:
  1. Whether the Respondent has satisfied the requirements for review under Order 45 Rule 1 of the Civil Procedure Rules.
  2. Whether there is discovery of a new and important matter that warrants review of paragraph 34(a) of the judgment.
  3. Whether the application should be allowed and paragraph 34(a) of the judgment reviewed accordingly.

### **Analysis and Determination**

#### **1. Principles governing review**

7. Order 45 Rule 1 of the Civil Procedure Rules permits a party to apply for review where:
  1. There is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge at the time the decree was passed;
  2. There is some mistake or error apparent on the face of the record;
  3. Or for any other sufficient reason.



8. The substantive jurisdiction to review a judgment or order is conferred by Section 80 of the *Civil Procedure Act*, which provides:

“ Any person who considers himself aggrieved—

- a. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred or
- b. by a decree or order from which no appeal is allowed by this Act, 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 made the order.”

## **2. Discovery of new and important matter**

9. In *Pancras T. Swai v Kenya Breweries Limited* [2014] eKLR, the Court of Appeal held that:

“ The discovery of new and important matter or evidence or mistake or error apparent on the face of the record or for any other sufficient reason in rule 1 of Order 44 (now Order 45 in 2010 Civil Procedure Rules) relates to issues of facts which may emerge from evidence”.

10. The Applicant has annexed a copy of records from the National Transport and Safety Authority (NTSA) confirming that the Appellant is no longer the registered owner of motor vehicle registration number KBU 027Z. This evidence was neither disclosed by the Appellant nor available or known to the Respondent at the time judgment was delivered.

11. I am satisfied that the Respondent has demonstrated that the fact of change of ownership is a new and important matter which could not have been discovered earlier with reasonable diligence.

## **3. Whether Review is Warranted**

12. As was held by the Supreme Court of India in *Sahakari Khand Udyog Mandal Ltd v Commissioner of Central Excise & Customs*, 2005 AIR SC 1897, the doctrine of “unjust enrichment” is based on equity, and it can be invoked to deny the benefit to which a person is not otherwise entitled.

13. The Court of Appeal in *Chase International Investment Corporation and Another vs Laxman Keshra and 3 Others* [1978] eKLR was emphatic that the aim of equity is to do justice between parties.

14. This Court had directed the Respondent to replace the engine and transmission system in a vehicle that is no longer owned by the Appellant. Appellant sold the motor vehicle to Timothy Maitha who in turn sold it to Stephen Mbuthia. Enforcing paragraph 34(a) in these circumstances would result in conferring a benefit to a person who no longer has an interest in the subject motor vehicle.

15. Such a situation would unjustly enrich the Appellant and prejudice the Respondent, contrary to the principle that judicial orders must not serve to perpetrate injustice.

## **Disposition**

16. Given the foregoing, the Respondent has satisfied the threshold for review under Order 45 Rule 1 of the Civil Procedure Rules.



17. Accordingly, I allow the application dated 04<sup>th</sup> March 2025 and order that:

- a) Paragraph 34(a) of the judgment delivered on 27<sup>th</sup> May 2024 is hereby reviewed and set aside.
- b) In place of paragraph 34(a), it is ordered that the Respondent shall not be required to replace the engine and transmission system of motor vehicle registration number KBU 027Z.
- c) The rest of the judgment remains undisturbed.
- d) Each party shall bear their own costs of this application.

File closed

**DELIVERED AT NAIROBI THIS 08<sup>TH</sup> DAY OF MAY 2025**

**WAMAE.T. W. CHERERE**

**JUDGE**

Appearances

Court Assistant - Mr. Nyambala

For Appellant - Ms. Nekesa & Ms. Maina for W & M & Co. Advocates

For Respondent - Mr. Kipchumba for Elkington Associates

