



South Nyanza Sugar Company Ltd v Dimba (Suing as Legal Representative of Kevin Ochieng Dimba) (Civil Appeal 97 of 2019) [2025] KEHC 7220 (KLR) (2 May 2025) (Ruling)

Neutral citation: [2025] KEHC 7220 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CIVIL APPEAL 97 OF 2019
RPV WENDOH, J
MAY 2, 2025**

BETWEEN

SOUTH NYANZA SUGAR COMPANY LTD APPELLANT

AND

JANET ATIENO DIMBA (SUING AS LEGAL REPRESENTATIVE OF KEVIN OCHIENG DIMBA) RESPONDENT

RULING

1. The application for consideration is dated 31/10/2023. It has been brought by Janet Atieno Dimba (suing as the legal representative of Kevin Ochieng Dimba) (the applicant). South Nyanza Sugar Company Limited is the respondent. The applicant is seeking: -
 1. That this court be pleased to review the judgment and decree issued on 15/2/2023;
 2. That the respondent be ordered to pay the applicant the balance of the decretal sum, accrued interests and costs awarded by the trial court;
 3. Costs be provided for.
2. The application is based on the grounds on its face and the supporting affidavit of Ms. Irene Kusa, Counsel for the applicant. It was deposed that in the body of the judgement, the trial court reviewed the findings of the trial court in terms of the pain and suffering, multiplier and dependency ratio to Kshs. 10,000/=, 25 years and ½ respectively; that this court made an arithmetic error when it made a net award of Kshs. 1,062,000/= instead of Kshs. 1,141,000/=; that this court made an error by subtracting the award under the Law Reform Act after subjecting the award to contribution on liability when the said amount ought to have been deducted from the total award before subjecting the same to contribution on liability; that both parties are in agreement that there is arithmetic error on the face of the record, but they are not in agreement on the proper figure hence not able to come up with a consent to settle the error.



3. It was further deposed that the respondent used its own figures to pay the applicant without seeking review by this court; that the respondent has declined to pay the balance being sought by the applicant. The applicant urged that it is necessary for this court to review its judgement to facilitate payment of the correct amount.
4. The application is opposed. The respondent filed 10 grounds of opposition dated 21/11/2023 which can be summarised as follows: -
 - a. The award of interest on damages is discretionary, and the judge who determined this appeal having rendered herself, this court cannot interfere with the same;
 - b. That there is no error apparent on the face of the record;
 - c. That this court lacks jurisdiction to grant any one or both of the reliefs sought in the motion;
 - d. The application is fatally defective, for the reasons that no decree has been exhibited in the motion;
 - e. The instant application is overtaken by events and if the orders being sought are granted, it will be superfluous and would not serve any useful purpose.
5. Directions on the hearing of the application were taken that each party files written submissions. It is only the applicant who complied by filing written submissions dated 27/12/2023 which I have considered. Despite being allowed time, the Respondents did not file the submissions. I have also duly considered the application and the grounds of opposition. The issue for consideration is whether the applicant has preferred grounds to justify the review of this court's judgement dated and delivered on 15/2/2023 by Hon. Odera J.
6. The guiding principles for review are provided for in Order 45 Rules (1) and (2) of the [Civil Procedure Rules](#) as follows: -
 - a. A decree in which no appeal is allowed;
 - b. There is discovery of new and important matter which after exercise of due diligence was not within the applicant's knowledge;
 - c. There was a mistake or an apparent error on the face of the record;
 - d. There are other sufficient reasons;
 - e. The application must be made without unreasonable delay.
7. The applicant contends that there was an apparent error on the face of the record on the calculations of the final figure due to the applicant. The Learned Judge Hon. Lady Justice Odera interfered with the decision of the trial court specifically on the award of pain and suffering, dependency ratio and multiplier. She varied the same to Kshs. 10,000/=, ½ and 25 years respectively. The Learned Judge calculated the damages due to the appellant to be Kshs. 1,560,000/=. She further added the funeral expenses of Kshs. 100,000/= and subtracted a contribution of 30% and Kshs. 100,000/= for loss of expectation of life arriving at a figure of Kshs. 1, 162, 000/=.
7. Basing my findings on the varied terms as per this court's judgement of 15/2/2023, the variation of the figures would be as follows: -
 - a. Pain and Suffering - Kshs. 10,000/=
 - b. Loss of dependency (10,000 × ½ × 25 × 12) - Kshs. 1, 500,000/=



- c. Special Damages - Kshs. 20,000/=
 - d. Funeral Expenses - Kshs. 100,000/=
 - e. Loss of Expectation of Life - Kshs. 100,000/=
 - Sub total - Kshs. 1,730,000/=
 - f. Less Kshs. 100,000
 - (loss of expectation of life) - Kshs. 100,000/=
 - Sub total - Kshs. 1, 630,000/=
 - g. Less 30% contributory negligence - Kshs. 489,000/=
 - Grand Total - Kshs. 1, 141,000/=
8. This court by sheer oversight, failed to add the award of loss of expectation of life in the first instance before subtracting the same. I agree that this was an apparent error on the face of the record.
9. On the issue of interest, once the appellate court sets aside the decision of the trial court, then the decision arising from the appellate court becomes the binding decision to the parties. The court did not make any order on interest. The judge for unknown reason did not award interest and interest being an exercise of discretion this court will not interfere because it is not sitting on appeal.
10. It is the finding of this court that the application has merit. The following orders do issue: -
- a. The award of Kshs. 1, 062,000/= is varied to Kshs. 1, 141,000/=.
 - b. The Respondent is hereby awarded a total of Kshs. 1,141,000/=
 - c. Each party to bear costs of this application.

DATED, DELIVERED AND SIGNED AT MIGORI THIS 2ND DAY OF MAY, 2024.

R. WENDOH

JUDGE.

Ruling delivered in the presence of:-

Ms. Kusa for the Applicant.

Mr. Odero for the Respondent.

Emma and Phelix Court Assistants

