



**Mwananchi Credit Limited v Okuta & another (Civil Case
E183 of 2024) [2025] KEHC 8482 (KLR) (13 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8482 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL CASE E183 OF 2024**

A MABEYA, J

JUNE 13, 2025

BETWEEN

MWANANCHI CREDIT LIMITED APPELLANT

AND

ALFRED OMONDI OKUTA 1ST RESPONDENT

CHARLES ODHIAMBO OLOO 2ND RESPONDENT

*(Being an appeal from the Ruling and Order of Hon. M. Shimenga
PM delivered on the 12/9/2024 in the Kisumu CMCC No. E295 of
2022, Alfred Omondi Okuta v Charles Odhiambo Oloo & Another)*

JUDGMENT

1. The 1st respondent filed the primary suit before the trial court against the appellant and 2nd respondent seeking a permanent injunction to restrain them from repossessing motor vehicles registration numbers KCN 383E and KCW 312Y which he claimed he had acquired title and possession to. In the alternative, he claimed for a refund of Kshs. 1,969,000/- being money paid to the defendants, auctioneer charges of Kshs. 48,720/- and Kshs. 172,800/- being expenses for repair, repainting and replacement of parts.
2. The appellant entered appearance and filed its statement of defence dated 13/4/2023 in which it denied the claim in toto. The 2nd respondent did not enter appearance or file any defence.
3. The matter proceeded to trial whereby the trial court found that the 1st respondent had proved his case on a balance of probabilities and by a judgment delivered on 4/4/2024, the trial court decreed that: -
 - a. An order for the refund of Kshs. 1,969,000/- being money paid to the defendants, auctioneer charges of Kshs. 48,720 and Kshs. 172,800/- being the repair, repainting and replacement of worn out parts expenses all together with interest at court rates from the date of this judgment.



- b. Costs of the suit.
 - c. There be thirty days stay of execution.
4. Being dissatisfied with the said Judgment, the appellant filed an application dated 29/4/2024 under sections 3, 3a & 63 (e) of the Civil Procedure Act, Orders 21, 39 & 51 Rule 1 of the Civil Procedure Rules in which it sought stay of execution of the orders as well as an interpretation and/or review of the judgment to apportion liability as between it and the 2nd respondent.
 5. The application was opposed vide a replying affidavit sworn by the 1st respondent on the 3/7/2024 on the basis that the issue of liability raised by the appellant was an issue for appeal and not review.
 6. In its ruling delivered on the 12/9/2024, the trial court proceeded reviewed the judgment and ordered as follows: -
 - a. A declaration that the taking away of the said motor vehicles registration number KCN 383E and KCW 312Y was unlawful and amount to breach of the plaintiff's rights to peaceful ownership possession of the said motor vehicles.
 - b. An order for the delivery of the said motor vehicles registration number KCN 383E and KCW 312Y and of their logbooks and transfer documents to the plaintiff.
 - c. A permanent order of injunction restraining the defendants either by themselves, agents, servants, representatives and or any other person authorised by them from taking away the said motor vehicles registration number KCN 383E and KCW 312Y from the plaintiff.
 - d. In the alternative an order for the refund of Kshs. 1,969,000/- being money paid to the defendants, auctioneer charges of Kshs. 48,720 and Kshs. 172,800/- being the repair, repainting and replacement of worn out parts expenses all together with interest at court rates from the date of filing this suit until payment in full.
 - e. That the motor vehicle registration number KCW 312Y held at Kondele Police Station by the OCS shall only be released to the 2nd defendant or their agents Nyaluoyo Auctioneers upon them complying with order (d) above.
 - f. The plaintiff will have the costs of the suit.
 - g. Interest on (e) and (f) above at court rates.
 7. Being dissatisfied with the said ruling/order, the appellant lodged this appeal vide the Memorandum of Appeal dated 16/9/2024 and raised twelve (12) grounds of appeal that may be summarized as follows: -
 - a. That the trial court erred in law and fact by applying the wrong provisions of the law and legal principles.
 - b. That the trial court erred in law and in fact by reviewing the judgment and granting prayers/reliefs not sought in the application dated 19/4/2024.
 8. The appeal was disposed of by written submissions. The appellant submitted that its case having been specific to the reliefs and scope of review sought, it was not open to the trial court to reopen and review the entire decision and grant orders not sought by either party.
 9. That the issue of apportioning liability constituted sufficient cause so as to warrant a review of the court's judgment and as such, this court ought to find the appeal merited and proceed to apportion liability as between the judgment debtors.



10. In response, the respondent submitted that the appellant's application before the trial court sought for an interpretation and/or review of the judgment to apportion liability to the defendants and that subsequently, the prayers that were granted by the court were able to clarify the entire judgment including the issue of costs.
11. That there was no error in law or fact committed by the trial magistrate in the impugned ruling and as this was an application for the interpretation or review of the court's judgement, the court had powers to interpret, clarify and correct the error apparent on the record of its judgement.
12. That the issue of disproportionate liability between the appellant and 2nd respondent and the appellant being condemned to refund what it had not received ought to have been the subject of an appeal and not review. That the trial court was right in clarifying that the appellant and 2nd respondent were jointly and severally liable to the 1st respondent.
13. This being a first appeal, the Court is duty bound to evaluate the evidence before the trial court afresh and come to its own independent findings and conclusions. See *Selles & Anor v. Associated Motor Boat Co Ltd & Others* [1968] EA 123.
14. The impugned ruling subject of this appeal was in relation to the appellant's application dated 29/4/2024. The same was brought under sections 3, 3a & 63 (e) of the *Civil Procedure Act*, Orders 21, 39 & 51 Rule 1 of the Civil Procedure Rules by which the appellant sought an extension of the stay orders as well as an interpretation and/or review of the judgment to apportion liability as between it and 2nd respondent.
15. I have considered the evidence tendered before the trial court and the submissions made before me. The trial court erred in reviewing the judgment and granting the orders it did.
16. Although the correct provisions for review were not cited by the appellant, the application before the trial court was basically that of review. The correct provision was neither of those cited by the appellant but Order 45 of the Civil Procedure Rules.
17. That provision provides for three circumstances under which an order for review can be made. These are that; an applicant must demonstrate 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, that there is a mistake or error apparent on the face of the record and finally, that there is sufficient cause.
18. In the present case, the appellant made submissions to the effect that there was an error on the face of the record as the trial court failed to consider that it was the 2nd respondent that fraudulently misled the 1st respondent into entering into a sale agreement without disclosing the extent of his liabilities to the appellant and further that the issue of apportioning liability constituted a sufficient cause to warrant review of the court's judgment.
19. In *National Bank of Kenya Ltd v 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.”



20. Similarly, in *Paul Mwaniki v National Hospital Insurance Fund Board of Management* [2020] eKLR, it was held that: -

“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.

...

“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. ... 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.”

21. Evidently, from the foregoing, it is clear that to warrant a review, 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.
22. As to whether the issue of apportionment of liability constitutes ‘sufficient cause’, In *Republic v Cabinet Secretary for Interior and Co-Ordination of National Government Ex Parte Abullahi Said Sald* [2019] eKLR, the court observed, with respect to any other sufficient reason as follows:

“A court can review a judgment for any other sufficient reason. In the case of *Sadar Mohamed v Charan Singh and Another* [19] 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 [20] (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 judgement. [21]

31. I also find useful guidance in *Tokesi Mambili and others v Simion Litsanga* [22] where they held as follows: -

- i. 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.



ii. Where the application is based on sufficient reason it is for the Court to exercise its discretion.”

23. In the present case, from the submissions made before this case, the appellant pursued the review of the judgment on two limbs, that there was an error apparent on the face of the judgment and that there was sufficient reason.
24. The trial court, in finding the application for review meritorious, it considered the implications of liability on joint tort-feasors. It allowed the appellant’s application dated 29/4/2024 and instead of granting the orders the sought therein, it proceeded to grant the orders set out above.
25. The appellant complained that the trial court applied wrong provisions of the law and legal principles by reviewing the judgment and granting prayers/reliefs not sought in the application dated 19/4/2024.
26. It is a cardinal principle that a court of law will only grant reliefs sought by a party. The defence of the appellant had not sought any judgment or made any claim against the 2nd respondent. It was an error for the appellant to seek apportionment of liability post-judgment. Where a court proceeds to grant a relief not prayed for, it amounts to a court considering a case that is not before it.
27. In the present case, the Court finds that there was no ground at all to review the judgment. That may explain why the trial court ended up granting orders that had not been prayed for.
28. Accordingly, the ruling delivered on the 12/9/2024 was made in error and the court erred in granting prayers that had not been sought. The ruling cannot stand. The same is hereby set aside.
29. Although there was no cross appeal in this matter, the Court has found that the issues raised in the application before the trial court should have been for appeal and not review.
30. Accordingly, the appeal is hereby allowed and the ruling made on 12/9/2024 is hereby set aside. The Court substitutes with an order dismissing the application and reinstating the judgment of 4/4/2024. Each party do bear own costs of the appeal.

It is so decreed.

DATED AND DELIVERED AT KISUMU THIS 13TH DAY OF JUNE, 2025.

A. MABEYA, FCI Arb

JUDGE.

