



Nanak Trucking Co. Ltd v Juma (Suing as the Legal Representative and Administrator of the Estate of Kennedy Kadima Juma Deceased) (Civil Appeal E170 of 2022) [2025] KEHC 7895 (KLR) (5 June 2025) (Ruling)

Neutral citation: [2025] KEHC 7895 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E170 OF 2022
RN NYAKUNDI, J
JUNE 5, 2025**

BETWEEN

NANAK TRUCKING CO. LTD APPELLANT

AND

ANTONY KADIMA JUMA (SUING AS THE LEGAL REPRESENTATIVE AND ADMINISTRATOR OF THE ESTATE OF KENNEDY KADIMA JUMA DECEASED) RESPONDENT

(Being an appeal from the judgment and decree of Hon. Richard O. Odenyo, Senior Principal Magistrate delivered in Eldoret CMCC No. E012 of 2020 on 10th November, 2022)

RULING

Representation:

M/s Nishi Pandit & Company Advocates

M/s Kimaru Kiplagat & Company Advocates

1. What is pending before me for determination is a Notice of Motion Application dated 8th May 2025 in which the Appellant /Applicant is seeking the following orders:
 - a. That the Court be pleased to pronounce itself on the issue of costs as per the judgement herein dated the 3/4/2025
 - b. That costs be provided for.
2. The Application is based on the grounds on the face of it among others:
 - a. That the court delivered its Judgement in this matter on 3rd day of April 2025.



- b. That upon delivery of the said Judgement the Honourable Court was silent on the issue of costs of the Appeal
 - c. That it is only fair and prudent that this Honourable Court makes a pronouncement on the issue of costs of this Appeal.
3. The Application is supported by the annexed affidavit dated 8th May 2025 sworn by MARTIN M. WANYONYI in which he avers as follows:
- a. That the Honourable lordship delivered Judgement in this matter on the 3/4/2025.
 - b. That upon delivery of the said Judgement the Applicant noticed of the same a week later upon checking the judiciary kiosk.
 - c. That on the perusing the Judgement of the Honourable Lordship, the same was silent on the issue of costs of the cause.
 - d. That on realizing that there were no orders as to costs, the Applicant herein wrote a letter to the Honourable Ladyship dated the 10/04/2025.
 - e. That thereafter we were directed that we do file a formal Application, an Application which we hereby tender.
 - f. That the costs of the Lower Court file had been awarded to the Applicant/Respondent where after the full decretal amount was deposited in a joint interest earning account.
 - g. That it is therefore fair that this Honourable Court makes a pronouncement on the costs of the case to enable parties now share the amounts deposited in the joint account amicably.
 - h. That this litigation must come to an end.
 - i. That this Honourable Court has the discretion and power to issue the orders sought.

Analysis and Determination

4. I have read and considered the Notice of Motion Application herein and the Affidavit in support of the same. There is only one issue manifest for determination:

Whether this court should review its orders dated 3rd April 2025 specifically the limb relating to assessment of costs.

5. On the first issue, Section 80 of the [Civil Procedure Act](#) and Order 45 Rule 1 of the Civil Procedure Rules provides as follows:

Section 80. Review

“ 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, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”



[Order 45, rule 1.] Application for review of decree or order.

“ 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 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 on which he applies for the review”

6. From the above provisions, it is clear that while Section 80 of the *Civil Procedure Act* grants the court the power to make orders for review, Order 45 sets out the jurisdiction and scope of review by hinging review to discovery of new and important matters or evidence, mistake or error on the face of the record and any other sufficient reason.

7. The Court of Appeal had the following to say in an application for review in the case of National Bank of Kenya Ltd vs Ndungu Njau

“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 provision of law cannot be a ground for review.”

8. In *Muyodi vs. Industrial and Commercial Development Corporation & Another* [2006] 1 EA 243, the Court of Appeal described an error apparent on the face of the record as follows:

“In *Nyamogo & Nyamogo -vs- Kogo* (2001) EA 174 this Court said that an error apparent 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 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 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. This laid down principle of law is indeed applicable in the matter before us.”

9. Moreover, in *Chandrakhant Joshibhai Patel -v- R* [2004] TLR, 218 it had been held that an error stated to be apparent on the face of the record:

“...must be such as can be seen by one who runs and reads, that is, an obvious and patent mistake and not something which can be established by a long-drawn process of reading on points on which may be conceivably be two opinions.”

10. To the statutory grounds, the court may also add instances where the applicant was wrongly deprived of an opportunity to be heard or where the impugned decision or order was procured illegally or by fraud or perjury: see *Serengeti Road Services -v- CRBD Bank Limited* [2011] 2 EA 395. Also, to be included as part of sufficient reason is where the impugned order if reviewed, would lead the court in promoting public interest and enhancing public confidence in the rule of law and the system of justice: see *Benjoh Amalgamated Limited & Another vs. Kenya Commercial Bank Limited* (supra).

11. This Honourable Court takes cognizant note that that there is an error apparent on the face of the said judgment dated 3rd April 2025, specifically with regard to the order assessing the costs of the appeal. This Honourable Court did not take into consideration the order relating to the costs on the Judgement.

12. This observation is obviously the right proposition in law. First and foremost, under Article 165(3)(a) of *the constitution*, the court has wide, original and unlimited jurisdiction to deal with civil matters, this provision as read together with Section 1A, 1B, 3A of the *civil procedure Act*, allows/mandate’s the court to expeditiously and proportionately determine proceedings efficiently and in a timely manner. Further nothing limits or otherwise affect the courts inherent power to make such orders as any be necessary for ends of justice and/or to prevent abuse of the court process.

13. The *Civil Procedure Act* at section 27 provides that;

Section 27(1) subject to such conditions and limitations as maybe prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full powers to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to exercise of those powers;

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.”

14. Based on the above provision, it is crystal clear that court or judge shall have full powers to determine by whom and out of what property and to what extent such costs are to be paid. Thus, having found



that the court has the jurisdiction to assess costs at the end of the trial/appeal, the same did constitute an error and its decision can be reviewed.

15. For those reasons, under section 80 of the *Civil Procedure Act* and Order 45, rule 1 of the Civil Procedure Rules, the impugned judgement delivered on 3rd April 2025 in so far as clause 71 is concerned shall read as follows: that the Appeal partially succeeds and the Judgement is therefore entered in the following terms with costs.
16. The other terms on General Damages, loss of expectation of life, loss of dependency, special damages remain undisturbed.
17. Orders accordingly

SIGNED, DATED AND DELIVERED AT ELDORET THIS 5TH DAY OF JUNE 2025

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R. NYAKUNDI

JUDGE

