



**Mwangemi v Mchana (Civil Appeal E069 of 2024)
[2025] KEHC 12973 (KLR) (19 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12973 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL APPEAL E069 OF 2024
M THANDE, J
SEPTEMBER 19, 2025**

BETWEEN

WILBERFORCE KAMBALA MWANGEMI APPELLANT

AND

JOHN KIDOSHI MCHANA RESPONDENT

JUDGMENT

1. This is an appeal from the ruling and order of the Small Claims Court dated 2.5.24 dismissing the Appellant's application for review of its judgment of 21.2.24.
2. The Respondent filed a statement of claim dated 23.1.24 against the Appellant for payment of Kshs. 173,500/= being fees for services rendered. By its judgment of 21.2.24, the court entered judgment against the Appellant for the sum of Kshs. 150,000/= and costs of Kshs. 8,000/=.
3. Being dissatisfied with the decision, the Appellant elected to apply for review of the decision vide an application dated 26.3.24 on the ground of availability of new evidence. The Appellant stated that he had obtained a copy of a cheque from his bank for Kshs. 70,000/= drawn in favour of the Respondent. He sought to rely on the said cheque in support of his defence that he had paid the Respondent a total of Kshs. 131,000/=, of which Kshs. 61,000/= was paid in cash. He also had new evidence that the Respondent was accustomed to undertaking management of accounts work without instructions and even did so for the Appellant after judgment.
4. The Respondent opposed the application and averred that the Appellant was aware of the cheque and cash payment at the time of filing his response, and cannot claim that the same is new evidence. He asserted that he had attached a statement in his list of documents showing the said payments but that the same was for VAT returns up to August 2023 and for accounts up to 31.12.22 and not for management of accounts.



5. In his supplementary affidavit sworn on 29.4.24, the Appellant averred that the statement produced by the Respondent amounted to an admission of payment and is estopped from denying the averments. Further that the Respondent failed to prove to the trial court that there was an agreement between them for management of accounts.
6. In the impugned ruling, the trial court found that it was functus officio, having rendered its decision and therefore had no jurisdiction to issue the orders sought. The trial court further stated that to allow the application would be to sit on appeal of its own decision.
7. The Appellant has now filed an appeal against the decision of the trial court listing the following grounds:
 1. That the trial court erred in law and facts by finding that it did not have jurisdiction to appeal its own decision whereas the Application dated 26th March 2024 was an application for Review and not an Appeal.
 2. That the trial court failed to consider the Evidence produced by the Appellant in his Supporting Affidavit supporting the Application dated 26th March 2024 brought under Order 45 Rule 1 of the Civil Procedure rules.
 3. That the trial court erred in law and facts by failing to find that the evidence brought by the Appellant in his Application dated 26th March 2024 proved that he had already paid the Respondent herein and therefore the Respondent was not entitled to any further claims from the Claimant.
 4. That the trial court failed to consider the Appellant's submission in the matter thus contravening the provisions of natural justice.
 5. That the trial court failed to exercise its discretion properly and as a result reached a perverse finding.
8. The Appellant prayed that the impugned ruling and any other consequential orders be varied and that his application in the trial court be allowed. He also prayed for costs of the Appeal.
9. The Appellant challenges the trial court's exercise of discretion dismissing his application for review. As the Court considers the Appeal herein, it is guided by the principal set out in *Mbogo and Another v Shah* [1968] EA 15 where the Court of Appeal stated:

An appellate court will not interfere with the exercise of the trial court's discretion unless it is satisfied that the court in exercising its discretion misdirected itself in some matters and as a result arrived at a decision that was erroneous, or unless it is manifest from the case as a whole that the court has been clearly wrong in the exercise of judicial discretion and that as a result there has been misjustice.
10. Section 41 of the [Small Claims Court Act](#) provides for review of the orders of the court as follows:
 - (1) An Adjudicator may, on application by any aggrieved party or on his or her own motion, review any order of the Court on the ground that—
 - a. the order was made ex-parte without notice to the applicant;
 - b. the claim or order was outside the jurisdiction of the Court;
 - c. the order was obtained fraudulently;
 - d. there was an error of law on the face of the record; or
 - e. new facts previously not before the Court have been discovered by either of the parties.



(2) The application referred to under subsection (1) shall be made within thirty days of the order or award sought to be reviewed or such other period as the court may allow.

11. The law allows an aggrieved party to apply for review of an order of the court on the basis that the same was made ex-parte or the claim or order was beyond the jurisdiction of the court. Review of an order may also be sought where the same was obtained fraudulently or there was an error on the face of the record. Lastly, and this is the ground cited by the Appellant, review may be sought on discovery by either party of new facts not before the court.
12. The law further requires that an application for review be made within 30 days of the order sought to be reviewed and the court may allow any other period.
13. It can be seen from the foregoing provisions that an application for review may be made in respect of an order of the court and that such application is made to the court which passed the same and that court may make such order thereon as it thinks fit.
14. The record shows that the trial court did not even consider whether the Appellant had met the threshold set out in Section 41 of the Act to warrant the grant of the orders sought. She summarily dismissed the application for review citing want of jurisdiction on account of the court being functus officio having made its decision.
15. What was before the trial court was not an appeal but an application for review of its decision. By failing to consider the application, the trial court clearly misdirected itself by declining jurisdiction in the face of clear provisions of the law that in fact confer on it the jurisdiction to consider an application for review of its own decree or order.
16. In light of the foregoing, I find that the Appeal is merited and the same is allowed on terms that the ruling of the Small Claims Court dated 2.5.24 is set aside. I direct that the application dated 26.3.24 be heard by another adjudicator other than Hon. Mutemi. The Appellant shall have costs of the Appeal.

DATED SIGNED AND DELIVERED IN MALINDI THIS 19TH DAY OF SEPTEMBER 2025

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M. THANDE

JUDGE

