



**Nthama v Syombua (Civil Appeal E062 of 2022)  
[2025] KEHC 12572 (KLR) (12 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12572 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CIVIL APPEAL E062 OF 2022  
TM MATHEKA, J  
SEPTEMBER 12, 2025**

**BETWEEN**

**GERALD NZIMBI NTHAMA ..... APPELLANT**

**AND**

**DOROTHY SYOMBUA ..... RESPONDENT**

**RULING**

1. Before me is the Notice of Motion dated 24th October 2024 seeking review of the Judgment of this court delivered on 18th Oct 2024 due to an apparent error on its face.
2. The application is brought under sections 1A, 1B, 31 of Cap 21 and Order 45 Rule 1(2) , Order 51 rule 1 of the CPR , Article 152(d)(sic) , 50(1) of the Constitution 2010.
3. It is supported by the affidavit of Dorothy Syombua.
4. Her case is that this court erroneously thought stated that the applicant had submitted for the sum of Ksh 200,000 GD in the subordinate court raising the query as to how then the trial court would have made an award of Ksh 500,000.
5. That in fact the applicant had submitted for the sum of Ksh 800,000. That this court , on that basis made the award of Ksh 185,000 General Damages.
6. That this court also missed out on the fact that the minor had suffered a fracture. The application is opposed through the affidavit of the Respondent herein to the effect that this court in citing the Ksh 200,000 was merely critiquing the learned magistrate who stated in his Judgment that the applicant had submitted for Ksh 200,000 and proceeded to award Ksh 500,000. That this court was aware of the submission for Ksh 800, 00 and only took into consideration the medical reports by the two doctors.
7. Parties were directed to file written submissions.



8. I have not seen any from the Respondent.
9. I have carefully considered the application, the supporting and replying affidavits and the submissions by the respondent. The only issue is whether this application meets the criteria of Order 45 rule 1
  1. Application for review of decree or order
    - (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.
10. The error is said to be this portion of my judgment where I cited the Judgment of the learned trial magistrate regarding the submissions by counsel for the plaintiff/respondent.
11. However, a reading of the Judgment of this court shows clearly that this court was aware of the submissions by counsel for the sum of Ksh 800,000 for General damages.
12. In addition, this court noted the trial court listed a completely different set of injuries from the ones cited by the plaintiff in his Judgment. The lack of evidence for the alleged fracture led to the reduction of the award as what remained were soft tissue injuries that were not commensurate with the award of Ksh 500,000.
13. In the circumstances, I find the application to be without merit.
14. It is dismissed with costs.

**DATED, SIGNED AND DELIVERED VIA CTS THIS 12TH DAY OF SEPTEMBER 2025.**

**MUMBUA T MATHEKA**

**JUDGE**

CA - Mwanatumu

