



**Mugetha v Maina (Suing as Administrators of the Estate of Judy Wathioba Munene)
(Civil Appeal 22 of 2019) [2024] KEHC 4982 (KLR) (15 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 4982 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL 22 OF 2019
LM NJUGUNA, J
MAY 15, 2024**

BETWEEN

SAMUEL MWANGI MUGETHA APPELLANT

AND

**ALEXANDER WACHIRA MAINA (SUING AS ADMINISTRATORS OF THE
ESTATE OF JUDY WATHIOBA MUNENE) RESPONDENT**

RULING

1. The appellant has filed a notice of motion dated 28th November 2023 seeking the following orders:
 1. Spent
 2. That this honourable court be pleased to review/vary its judgment delivered on 03rd November 2023;
 3. Spent
 4. The costs of this application be provided for
2. It is the appellant's case that there is an error apparent on the face of the record, which is an accidental mathematical mistake. That the court evaluated the possibility of using the multiplier method and stated that it would have applied a multiplier of 21 years with a $\frac{1}{2}$ dependency ratio and a multiplicand of Kshs. 8,757/= which brings the damages to Kshs.1,471,176/=. That the court stated that the value of the multiplier method would surpass the global sum of Kshs.3,000,000/= awarded by the trial court which is inaccurate.
3. The respondent filed grounds of opposition stating that the application is frivolous, vexatious and an abuse of the court process. That it does not demonstrate substantive grounds that would warrant such review and that the application should be dismissed with costs.



4. The issue for determination is whether the court should review its judgment delivered on 03rd November 2023.
5. Review is provided for under Section 80 of the *Civil procedure Act* as follows:

“ 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.”

Similarly, Order 45 Rule 1 of the *Civil Procedure Rules* provides:

(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.

6. The application herein was filed timeously within the same month as the date of delivery of the judgment. Upon perusal of the judgment, there is indeed an error on its face concerning the calculation of damages using the multiplier method. Paragraph 15 of the said judgment discussed how the court would apply the multiplier method as opposed to the global sum approach applied by the trial court. That the court would have applied a multiplier of 21 years with a $\frac{2}{3}$ dependency ratio and a multiplicand of Kshs. 8,757/= which brings the damages to Kshs.1,471,176/=. Paragraph 16 of the judgment indicates that the general damages to be awarded using the multiplier method would exceed the award of Kshs.3,000,000/= by the trial court.
7. This is surely an error apparent on the face of the judgment and the same should be corrected. Furthermore, section 80 of the *Civil Procedure Act* gives the court discretion to issue any orders it deems fit while exercising its right of review.
8. Therefore, the application has merits and it is hereby allowed with orders as follows:
 1. The application has merits and it is hereby allowed;
 2. The general damages awarded by the trial court is hereby reduced to Kshs.1,471,176/=: and
 3. Each party to bear its own costs of the appeal and this application.
9. It is so ordered.

DELIVERED, DATED AND SIGNED AT KERUGOYA THIS 15TH DAY OF MAY, 2024.

L. NJUGUNA



JUDGE

.....for the Appellant

.....for the Respondent

