



REPUBLIC OF KENYA



**KENYA LAW**  
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**Odhiambo v Mwananchi Credit Limited & another (Civil Case E030 of 2022) [2024] KEHC 7476 (KLR) (Civ) (20 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7476 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL  
CIVIL CASE E030 OF 2022**

**JN MULWA, J**

**JUNE 20, 2024**

**BETWEEN**

**LEONARD VICTOR ODHIAMBO ..... PLAINTIFF**

**AND**

**MWANANCHI CREDIT LIMITED ..... DEFENDANT**

**AND**

**LEONARD CHEGE MWANGI P/A LAAR AUCTIONEERS ..... CLAIMANT**

**RULING**

1. This Ruling is in respect of the 1<sup>st</sup> Respondent's Application dated 26/10/2023 brought under Order 51 of [Civil Procedure Rules](#) and Section 1A, 1B, 3A, 63E and 80 of the [Act](#).
2. The Applicant seeks orders: -
  1. Spent
  2. That the court reviews, varies, vacates and revises its ruling and consequential orders to the following extent: -
    - a. The amount of thrown away costs be revised to Kshs. 10,000/= from Kshs. 50,000/=
    - b. The order directing the unconditional release of motor vehicle be returned for safe storage by the 1<sup>st</sup> defendant.
  3. That in the event motor vehicle KCW 350Q is to be released the plaintiff caters for the storage cost at the yard.
  4. That costs of the application be provided for.



3. The 1<sup>st</sup> Defendants Advocate Daniel Wokabi swore the Supporting Affidavit on 26/10//2023 and annexed thereto the court Rulings subject of the review application dated 25/05/2023 (Mulwa J.) and dated 5/07/2022 (Chepkwony J).
4. The Application is opposed by a Replying Affidavit of the Plaintiff/Respondent sworn on 26/06/2022 and a further Replying Affidavit sworn on 21/07/2023 by one Silvia Wanjiru Njoroge (by leave of this court on 3/07/2023)
5. Both parties have also filed their respective submissions. The court has carefully considered the rival affidavits and submissions.

### **Analysis and Disposition**

6. The impugned ruling is dated 25/5/2023. Section 80 of the [Civil Procedure Act](#) (the Act) grants the court power to review its orders or judgments and make such orders as it may think fit.

Judicial review under Order 45 Rule 1 of the [CPR](#) sets out the conditions upon which the review orders may be granted, these being: -

- a. “Discovery of new and important matter or evidence which after due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the decree or the order made or;
  - b. On account of some mistake or error apparent on the face of the record, or
  - c. For any other sufficient reason and
  - d. That the Application has to be made without unreasonable delay”
7. The Applicant/1<sup>st</sup> Defendant prays that the order on throw away of Kshs. 50,000/= be set aside and or be reduced to Kshs. 10,000/- and further the order of unconditional release of motor vehicle registration no. KCW 350Q to the Respondent be revised and the motor vehicle be returned to the applicant for safe storage.
  8. Juxtaposing the above with the threshold and conditions provided under Order 45 [CPR](#) it has been submitted by the Applicant that the sum of Kshs. 50,000/=is excessive, and has urged for a reasonable sum proposing Kshs. 10,000/=.

Additionally, this court is called upon to find that “it mistakenly issued the orders for release of the motor vehicle; and in its place to substitute it with an order that the motor vehicle KCW 350Q be kept under safe custody of the defendant”.

9. The requirements and conditions under Order 45 [CPR](#) are stated as;
  - a. Discovery of new and important matter.....

By the applicant’s submissions and averments, no new or important matter is pointed out as having been discovered after delivery of the impugned ruling.

At all material times the applicant had all material facts relevant to the matter at his fingertips so what he discovered post the ruling, if any, has not been stated.
10. It is trite law that costs are awarded at courts discretion upon consideration of circumstances of the case as provided at Section 27 of the [civil procedure Act](#). The award of throw away costs in the circumstances were at the court’s discretion. It is not submitted that the said discretion was not exercised judiciously save that it is said to have been a mistake to award Kshs. 50,000/= instead of Kshs. 10,000/=.



11. A mistake or error on the face of the record was defined by the Court of Appeal in *National Bank of Kenya v Ndungu Njau* [1997] eKLR as follows:

“The error of omission must be self-evident and should not require an elaborate argument to be established....”

12. When the Applicant deposes that it was a mistake to award the amount of Kshs. 50,000/= the court and proposes what the court ought to have awarded, it cannot be an error or mistake under all circumstances to qualify as a ground for review.

The Court of Appeal in the case above further rendered: -

“.... 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....”

13. In *Republic v. Advocate Disciplinary Tribunal Ex-Parte Apollo Mboya* [2019] eKLR the court (Mativo J as he then was) summarized the following principles from numerous superior courts decisions that: -

1. A court can review its decision on either of the grounds enumerated in Order 45 Rule 1 and not otherwise.
2. The expression “any other sufficient reason” appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds
3. An error which is not self-evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of record justifying exercise of power under Section 80.
4. An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

14. A close scrutiny of the orders sought by the Applicant, it is evidently clear that what it seeks is not review orders but orders to set aside the said orders and substitute the same with its proposed orders. In respect thereof, an Appeal would have been more appropriate.

15. The Applicant has further not demonstrated that the inherent jurisdiction conferred to the court by both the *Constitution* and statute have not been exercised judiciously and even if that were so it would not be a matter for judicial review.

16. In the matter of release order on the motor vehicle to the 1<sup>st</sup> Defendant, no error or mistake has been pointed to the court to warrant a review order. If the orders are not palatable to the Applicant, he would have done otherwise than making the instant Application for review orders.

17. In my considered view, the Applicant is asking this court to sit on appeal over its orders, set aside and substitute them with the orders it proposes.

18. For the above reasons, the court finds and holds that the Application dated 26/1/2023 is misconceived, unwarranted, incompetent and an abuse of court process and does not meet any of the requirements and conditions provided under Order 45 Rule 1 of the *Civil Procedure Rules*.

It is dismissed with costs to the Respondent/Plaintiff.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 20<sup>TH</sup> OF JUNE, 2024.**

**JANET MULWA**



**JUDGE**

