



**East African Chains Limited v P.C. World Limited & another (Civil Suit
296 of 2013) [2024] KEHC 9060 (KLR) (Civ) (15 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9060 (KLR)

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

CIVIL

CIVIL SUIT 296 OF 2013

CW MEOLI, J

JULY 15, 2024

BETWEEN

EAST AFRICAN CHAINS LIMITED APPELLANT

AND

P.C. WORLD LIMITED 1ST RESPONDENT

AGGREY ADEMAH 2ND RESPONDENT

RULING

1. The Notice of Motion dated January 31, 2024 (the Motion) by P.C. World Limited (hereafter the 1st Respondent) is based on the grounds on its face and the depositions in the affidavit of Bobby Gadhia, described as a director of the said applicant. The 1st Respondent seeks the review and setting aside/ vacating of the order made by this court on 3rd August, 2023, and consequently, an order that the sums held as security deposited in court by East African Chains Limited (hereafter the 1st Respondent) be released to the advocates on record and/or to the 1st Respondent. The Motion is expressed to be brought under the provisions of sections 1, 1A, 1B and 3A of the Civil Procedure Act (CPA); and orders 45 of the Civil Procedure Rules (CPR).
2. The deponent stated in his affidavit that the subject order as made, is incapable of execution as it contains an error apparent on the face of the record. Specifically, the direction that:

“the sum held as security herein be released directly to the depositor, namely P.C. World Limited.” sic
3. The deponent further asserted that the 1st Respondent, referred to in the above manner, was not the depositor, of the subject monies. But rather, the Appellant which deposited the same as security pending appeal. That an order ought to be made to the effect that the deposit held be released to the



Advocates on record for the 1st Respondent. In the premises, the deponent urged this court to review the abovementioned order accordingly.

4. To oppose the Motion, the Appellant relied on the replying affidavit sworn by its Managing Director, Mark Tilbury, on 3rd April, 2024, who viewed the Motion as frivolous, vexatious and an attempt at deceit. He deposed that the Motion does not meet the threshold for review and setting aside, and that the 1st Respondent is no longer in existence and hence the firm of Mang'erere Bosire & Associates cannot purport to have received instructions therefrom, to file the Motion. He equally confirmed that the Appellant was the depositor of the security sum and urged that the order in question be upheld, to the extent that the security be released directly to the Appellant, being the depositor thereof. Otherwise, the deponent urged that the Motion be dismissed with costs.
5. On April 4, 2024 when the parties attended the hearing of the Motion, they agreed that the Motion be determined on the basis of the parties' respective affidavit evidence, in lieu of filing written submissions. Notably, Aggrey Ademah (hereafter the 2nd Respondent) did not respond to the Motion.
6. The court has considered the rival affidavit material in respect of the Motion. The principles applicable to review are codified in section 80 of the Civil Procedure Act and Order 45 of the CPR, the latter which provides that:

“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.”

7. From the above provision, the grounds upon which a court can review its decision are :
 - a. the discovery of new and important matter or evidence, or
 - b. some mistake or error apparent on the face of the record, or
 - c. any other sufficient reason.
8. In the case of Parliamentary Service Commission v Martin Nyaga Wambora & others [2018] eKLR the Supreme Court citing with approval the decision of the Court of Appeal for East Africa in Mbogo and another v Shah [1968] EA held:

“Consequently, drawing from the case law above, particularly *Mbogo and another v Shah*, we lay down the following as guiding principles for application(s) for review of a decision of the Court made in exercise of discretion as follows:

- i. A review of exercise of discretion is not as a matter of course to be undertaken in all decisions taken by a limited bench of this Court.



- ii. Review of exercise of discretion is not a right; but an equitable remedy which calls for a basis to be laid by the applicant to the satisfaction of the Court;
 - iii. An application for review of exercise of discretion is not an appeal or a chance for the applicant to re-argue his/her application.
 - iv. In an application for review of exercise of discretion, the applicant has to demonstrate, to the satisfaction of the Court, how the Court erred in the exercise of its discretion or exercised it whimsically.
 - v. During such review application, in focus is the decision of the Court and not the merit of the substantive motion subject of the decision under review.
 - vi. The applicant has to satisfactorily demonstrate that the judge(s) misdirected themselves in exercise discretion and:
 - a. as a result, a wrong decision was arrived at; or
 - b. it is manifest from the decision as a whole that the judge has been clearly wrong and as a result, there has been an apparent injustice.”
9. Thus, the power of the court in review is discretionary in nature. The successful party must tender sufficient and credible material in support of the grounds relied on, to persuade the court to exercise its discretion in his favour.
10. It is apposite here to briefly set out the events leading up to the Motion. The Appellant herein lodged the present appeal against a judgment delivered by the trial court on 3rd May, 2013 in Milimani CMCC No. 3834 of 2009 in favour of the 1st Respondent and against the Appellant and the 2nd Respondent. The decree was in the sum of Kshs. 339,000/-. Upon hearing the appeal, Kariuki, J. dismissed it by his judgment delivered on 20th December 2019. Subsequently, the Appellant unsuccessfully sought review of the aforesaid judgment. The application for review dated 23rd January, 2020 was dismissed by Mulwa, J. in her ruling delivered on 6th October, 2022.
11. Thereafter, the 1st Respondent moved this court by way of an application dated 17th October, 2022 seeking an order for the release of the sum of Kshs. 500,000/- previously deposited by the Appellant as security, to themselves through the firm of Mang’erere Bosire & Associates. That application was opposed by the Appellant. The court allowed the said application by way of the ruling and order made on 3rd August, 2023 but given misgivings stated in the ruling, upon strict terms. The resultant order read as follows:
- “Ultimately the 1st Respondent’s motion will be allowed. However, out of an abundance of caution, informed by the copies of official records tendered by the Appellant, the court directs that the sums held as security herein be released directly to the depositor, namely P.C. World Limited. Parties will bear their own costs.” sic
12. It is evident that the present Motion is grounded on ‘error apparent on the face of the record.’ In that regard, the Court of Appeal pronounced itself in *Muyodi v Industrial and Commercial Development Corporation & anor* [2006] 1 EA 243 as follows :
- “In *Nyamogo and Nyamogo v 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 the 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 a 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 apparent on the face of the record even though another view was also possible. Mere 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.”

13. Thus, an error apparent on the face of the record must be a self-evident error which does not require elaborate arguments in demonstration. The error cited in the Motion is that this court referred to the 1st Respondent as the depositor, and yet it is the Appellant who was the actual depositor of the security sum. Suffice it to say that, the 1st Respondent urged that an order be made for release of the security sum either to the 1st Respondent or to its advocates, namely the firm of Mang’erere Bosire & Associates.
14. In retort, the Appellant raised several matters, primarily the fact that the 1st Respondent is no longer in existence and the above advocate’s firm would have no proper instructions to file the Motion for starters. And consequently, both the 1st Respondent and its advocates lack *locus standi* in the matter.
15. The issue of *locus standi* of the 1st Respondent was previously raised by the Appellant before this court and considered during delivery of the ruling of 3rd August, 2023. That being the position, this court will not revisit the issue at this stage. That notwithstanding, it is evident from the record that the Appellant was the depositor of the security sum. As seen above, it is similarly evident by way of the ruling of 3rd August, 2023 that while this court allowed the 1st Respondent’s application for release of the security sum, in the exercise of caution owing to the doubts pertaining to the existence and legal standing of the 1st Respondent, it ordered that the same be released to the depositor. It is clear from the gist of the earlier ruling that reference to the 1st Respondent as the depositor was erroneous, as the depositor was undeniably the Appellant.
16. The court is satisfied that there was an error apparent on the face of the record, which would therefore warrant a review of the order accordingly. However, given the background and very pertinent issues raised by the Appellant regarding the legal status of the 1st Respondent, the court will allow the Notice of Motion dated 31st January, 2024 by amending its order of 3.08.2023 as follows:

“Ultimately the 1st Respondent’s motion will be allowed. However, out of an abundance of caution, informed by the copies of official records tendered by the Appellant, the court directs that the sums held as security herein be released directly to the 1st Respondent. Parties will bear their own costs.”
17. The court further directs that the payment shall be effected upon the 1st respondent satisfying the following conditions:
 - i. The 1st Respondent shall submit a written request in the hand of its managing director to the Deputy Registrar seeking transfer of the subject monies to its official bank account.
 - ii. The written request shall be accompanied by official records from the relevant authorities indicating that the 1st Respondent is currently a going concern.
 - iii. In this regard, the matter shall be mentioned before the Deputy Registrar on August 21, 2024.



18. The parties shall bear their own costs in the motion.

DELIVERED AND SIGNED ELECTRONICALLY AT NAIROBI ON THIS 15TH DAY OF JULY 2024.

C.MEOLI

JUDGE

In the presence of:

For the Appellant: Ms. Mbetsa

For the 1st Respondent: N/A

C/A: Erick

