



Jinnah v Jhanda & another; Mo Sound Entertainment (Interested Party) (Civil Case 350 of 2011) [2024] KEHC 9997 (KLR) (Civ) (1 August 2024) (Ruling)

Neutral citation: [2024] KEHC 9997 (KLR)

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

CIVIL

CIVIL CASE 350 OF 2011

AN ONGERI, J

AUGUST 1, 2024

BETWEEN

NAZIR JINNAH PLAINTIFF

AND

ZAHEER MERLAHI JHANDA 1ST DEFENDANT

CO-OPERATIVE BANK OF KENYA 2ND DEFENDANT

AND

MO SOUND ENTERTAINMENT INTERESTED PARTY

RULING

1. The application coming for consideration in this ruling is the one dated 22/11/2023 brought under Sections 1A, 1B, 3, 3A and 80 of the [Civil Procedure Act](#), Cap 21, Order 45 Rules 1 and 2 of the [Civil Procedure Rules](#) seeking the following orders;
 - i. That the judgment and/or order of this honorable court made on the 16th August 2023 be reviewed and/or varied only to the extent that Order (v), (vi) and (vii) reflect the current valuation at Kenya shillings three million four hundred and ninety six thousand eight hundred and twenty (Ksh.3,496,820.00)
 - ii. That the amount awarded by this honourable court as general damages for wear and tear of ksh.1,000,000.00 be substituted with kshs.3,496,820.00.
 - iii. That the costs of this application be provided for.
2. The application is based on the following grounds;



- i. That the applicant states that he has discovered 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 suit was filed and the judgment delivered.
 - ii. That the applicant was only able to conduct a valuation of the suit motor vehicle after judgment was duly entered by this honourable court and a release order of the motor vehicle issued.
 - iii. That the amount of ksh.1,000,000.00 awarded by this honourable court as general damages for purposes of restoring the motor vehicle to its initial state is manifestly low and an inadequate relief in the circumstances of the condition of the suit motor vehicle and applicable law.
 - iv. That the applicant has engaged the services of a licensed valuer who has assessed the condition of the sit motor vehicle and valued the repair costs at Kenya shillings three million four hundred and ninety six thousand eight hundred and twenty (ksh.3,496,820.00)
 - v. That for any other sufficient reason and in the interests of justice, the said judgment and/or order ought to be reviewed and/or varied to the extent that order (v), (vi) and (vii) reflect the current valuation at Kenya shillings three million four hundred and ninety six thousand eight hundred and twenty (Ksh.2,496,820.99).
3. It is based on the grounds on the face of it and supported on the affidavit of the applicant in which it is deposed that he has been able to conduct an inspection and valuation of the mv the subject of the suit and
 4. The respondent did not file any replying affidavit or submissions.
 5. The applicant submissions which I have duly considered.
 6. The sole issue for determination in this application is whether the court should review its judgment delivered on 16/8/2023.
 7. The applicant said the general damages of kshs.1,000,000 awarded were inadequate and should be substituted with an award of kshs.3,496,820 as per repair valuation quotation issued by TUNIT performance dated 26/10/2023.
 8. The law is very clear on the conditions to be met for review of the judgment of the court.
 9. I find that the applicant has not established the grounds for review of this court's judgment.
 10. The plaintiff/applicant did not plead the said special damages and when asked to submit on the issue of damages he did not seek leave to file a valuation report.
 11. There is no new evidence that was not within the knowledge of the plaintiff/ applicant at the time this case was heard.
 12. The plaintiff/applicant is attempting to table new evidence vide this application.
 13. The judgment herein was delivered on 16/8/2023 and the valuation report was obtained on 26/10/2023 after the fact.
 14. The application dated 22/11/2023 lacks in merit and the same is dismissed with no orders as to costs.
 15. This court stands by its earlier judgment that the plaintiff/applicant is entitled to the motor vehicle together with ksh.1,000,000 for purposes of restoring the motor vehicle to its initial state having been run down at the court premises.



16. The applicant herein has not met the threshold for review of the judgment of this court.
17. There is no error apparent on the face of the record and no new evidence that was not within the knowledge of the applicant has been put forward.
18. There is no basis for review of the judgment of this court.
19. The application dated 22/11/2023 be and is hereby dismissed with no orders as to cost and this file is marked as closed.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 1ST DAY OF AUGUST, 2024.

A. N. ONGERI

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant

