



**Kojwang v Kaunda (Civil Appeal E238 of 2023) [2024] KEHC 11116 (KLR)  
(Commercial and Tax) (20 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11116 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL APPEAL E238 OF 2023  
FG MUGAMBI, J  
SEPTEMBER 20, 2024**

**BETWEEN**

**EASTER HELLEN KOJWANG ..... APPELLANT**

**AND**

**KENNETH JOE KAUNDA ..... RESPONDENT**

*(Being an Appeal from the Ruling of the Small Claims Court at Nairobi by Hon. B.J Ofisi delivered electronically on 12th September 2023 S.C.C COMM No. E3213/2023)*

**RULING**

**Background**

1. The dispute between the parties has its origin in a botched investment between the parties. The appellants claim a balance of Kshs. 570,000/= being the amount owed to her from Kshs. 700,000/= which she had given to the respondent purportedly for purposes of a joint investment. She filed a claim at the Small Claims Court (SCC) where judgment was delivered on 28/7/2023 in her favor for £3492 pounds.
2. Following an application for review of the judgment by the respondent dated 8/8/2023, the Adjudicator issued a ruling on 12/9/2023 (the Ruling), reducing the amount initially awarded from Kshs. 495,259.60 to Kshs. 67,564/= on grounds of an arithmetic error. The appellant being dissatisfied with the trial court's ruling filed the present appeal.



## Analysis and Determination

3. The sole issue before the court is therefore whether the Ruling by the SCCC should be set aside. Parties filed their respective submissions as directed by this court, which I have considered together with the record of appeal and the authorities cited in support of rival claims.
4. The appellant takes issue with the basis upon which the court reviewed its decision. The appellant's case is that the grounds for review relied upon by the respondent did not qualify as 'an error apparent on the face of the record' as envisaged in Section 80 of the *Civil Procedure Act*, Order 45 Rule 1 and 2 of the Civil Procedure Rules 2010, Section 41 of the *Small Claims Court Act* and Rule 29 of *Small Claims Court Rules*.
5. The respondent on the other hand insists that there was indeed an error on the face of the record. This arose from the fact that the trial court in arriving at its judgment on the 28/7/2023, stated that the current value of the investment was £3,492 pounds equivalent to Kshs. 635,251.61 yet as per the expert report presented by the investment group, the final investment value was £1,189.91 pounds. The expert report relied upon by the respondent originated from the investment company that the parties had invested in.
6. Both parties acknowledge the jurisdiction conferred on the SCC to review its judgments and decisions under section 41 of the *Small Claims Court Act* and Order 5 Rule 29 of the Small Claims Court Rules. The sole question is whether this jurisdiction was correctly or put differently, judiciously exercised in the circumstances before the trial court.
7. An extract of the Ruling dated 12/9/2023 reads as follows:

“...The claimant/respondent also seeks for review of Kshs.140,000/= as computed by the court in the Judgment to Kshs 130,000/=. I have noted that the respondent availed evidence of two mpesa transactions amounting to Kshs. 60,000= and Kshs 80,000/= hence, the total amount sent to the claimant is Kshs 140,000/=.

The court relied on the report dated 11<sup>th</sup> November 2022 prepared by Vanguard among other documents. As per the said report, the final value of investment if liquidated as at date is 1,139.91 pounds and not 3,492 pounds. It was also indicated that based on these figures over the period of one year the account and fund management costs and charges would reduce the investment from 4359.00 pounds to 1,189.91 pounds. The Court inadvertently failed to consider this evidence hence, I find that the application meets the threshold for review as envisioned under Rule 23 of the *Small Claims Court Rules* 2019.”
8. I have equally looked at the judgment dated 28/7/2023 at page 178 of the Record of appeal. It is clear to me that the court indeed took note of the testimony and the evidence of the report and noted that:

“On 11<sup>th</sup> November 2022, the Investment Company through one Mr. George Parker informed him of the expected deductions in case of a liquidation. The deductions were as follows; Management fee (492.130 pounds), Taxes as levied (323.60 pounds), a conditional fine for early termination of contract (407.60 pounds). After deductions, the final value of investments if liquidated as at date, 1,189.91 pounds will be an equivalent of Kshs. 178,486.50.”
9. Although the court clearly acknowledged the evidence that the final value of the investments as at the time was 1,189.91 pounds, the judgment at pages 181 and 182 of the Record indicates that the



court ultimately disregarded or inadvertently failed to apply its own observations. This inconsistency suggests a disconnect between the court's observation of the evidence and its final decision which was that:

“In light of the foregoing, 3,492 pounds as per the current exchange rates is equivalent to Kshs. 635,251.60. The respondent paid the claimant a total of Kshs. 140,000/=. Consequently, the claimant's claim succeeds to the tune of (Kshs. 635,251.60-140,000/=) Kshs. 495,259.60 as per the current exchange rates plus interest at Court rates from the date filing the claim until payment in full.”

10. Each of the parties acknowledge that an error apparent on the face of the record refers to a clear, obvious mistake in a court's decision or judgment that does not require extensive examination or argument to identify. This type of error is apparent directly from the judgment or order itself, or from documents on the record that the court relied upon when making its decision. It is the kind of mistake that is so evident that it can be identified by merely looking at the record without the need for complex legal reasoning or re-evaluation of the evidence.
11. From my analysis and on the basis of the paragraphs that I have highlighted, it is clear that in rendering the impugned Ruling, the trial court considered the judgment and noted that despite having considered the figures in the expert report, the same were not applied in computing the final award. In my view that fell within the ambit of an error apparent on the face of the record.
12. I therefore find that the Learned Adjudicator came to the correct finding in the Ruling and that there is no reason to set it aside.

### **Disposition**

13. Accordingly, this appeal is dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED IN NAIROBI THIS 20<sup>TH</sup> DAY OF SEPTEMBER 2024.**

**F. MUGAMBI**

**JUDGE**

