



**Centre for Mathematics, Science & Technology Education in Africa Cemest v Services
(Civil Appeal E008 of 2018) [2023] KEHC 18501 (KLR) (Civ) (15 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18501 (KLR)

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

CIVIL

CIVIL APPEAL E008 OF 2018

CM KARIUKI, J

JUNE 15, 2023

BETWEEN

**CENTRE FOR MATHEMATICS, SCIENCE & TECHNOLOGY EDUCATION IN
AFRICA CEMEST APPELLANT**

AND

APEX SECURITY SERVICES RESPONDENT

RULING

1. In the Application dated November 28, 2022 applicant seeks prayers for the Review of the Judgment/ Decree entered on November 29, 2019 as shown vide paragraph 59 of the Judgment stating judgment entered for Ksh—5,540,000 instead of Kshs Five million four hundred fifty thousand Ksh 5,450,000 pleaded to vide prayer (a) of the plaint dated 14/5/2016.
2. The same seems not to be contested as no affidavit opposes the motion, and in any case, the plaint, which remains unamended, still stands with the same claim of Ksh 5,450,000.
3. The court had in paragraph 18 of the judgment that the plaint pleaded Kshs 5,450,000.
4. The Court inadvertently or by oversight entered judgment for Ksh 5,540,000 in lieu of Ksh 5,450,000.
5. I have perused the pleadings and proceedings and noted an error on the face of the record, which in this case, the court is empowered to correct under section 80 [CPA](#) cap 21 LOK and Order 45 Rule 1 [Civil Procedure Rule 2010](#).
6. Section 80 of the [Civil Procedure Act](#) Cap 21 provides 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.”

7. Order 45 Rule 1 of the *Civil Procedure Rules, 2010* provides as follows:-

“(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 at this moment 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.”

8. In *Republic v Public Procurement Administrative Review Board & 2 others* [2018] eKLR, it was held:-

“12. Section 80 gives review power, and Order 45 sets out the rules. The rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review, limiting it to the following grounds; (a) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed 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 whatever the ground there is a requirement that the application has to be made without unreasonable delay.”

9. In *Pancras T Swai v Kenya Breweries Limited* [2014] eKLR, the Court of Appeal held:-

“Order 44 rule 1 (now Order 45 rule 1 in the 2010 Civil Procedure Rules) gave the trial Court discretionary power to allow review on the three limbs therein stated or “for any sufficient reason.”... As repeatedly pointed out in various decisions of this Court, the words, “for any sufficient reason” must be viewed in the context firstly of Section 80 of the Civil Procedure Act, Cap 21, which confers an unfettered right to apply for review and secondly on the current jurisprudential thinking that the words need not be analogous with the other grounds specified in the order.”

10. Thus, the court finds merit in the application and corrects the judgment dated November 29, 2019 to read vide paragraph 59 (i).



- i. The appeal succeeds partially to the extent that the judgment of the trial Court Magistrate is substituted with Ksh Five Million Four Hundred and fifty Thousand (5,450,000).
- ii. No orders as to costs.

DATED, SIGNED, AND DELIVERED AT NYAHURURU ON THIS 15TH DAY OF JUNE 2023.

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CHARLES KARIUKI

JUDGE

