



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CIVIL CASE NUMBER 83 OF 1998

JOHN MWANGI KINYANJUI..... PLAINTIFF

VERSUS

CARTUBOX INDUSTRIES (E.A) LTD.....DEFENDANT

RULING

1. Judgment in this suit was delivered on the 4th July 2019 whereof awards on both special and general damages were made to the plaintiff.
2. By an application dated the 23rd July 2019, the plaintiff has urged the court that there are arithmetical errors in respect of the awards that need to be corrected. However, the application is brought under **Order 45 rule 1, 2 and 3 of the Civil Procedure Rules** that deal with matters of review of an order or judgment on account of discovery of new and important matter of evidence which was not within the parties knowledge, or on account of some mistake or error apparent on the face of the record, or any sufficient reason.
3. I have considered the supporting affidavit and grounds for the application. What comes out clearly is that the applicant seeks to have some figures in the awards corrected, being of arithmetical nature, and not review of the judgment.

Indeed both parties who appeared before me, Mr. Wanjohi holding brief for Kimani for the applicant and Mr. Kahiga Advocate for the Respondent, were in agreement and urged the court to correct the errors, if any in respect of three items, being:

- (1) *Earnings of the deceased*
- (2) *Cost of wheelchairs, whether one or two*
- (3) *Transportation costs to and from hospital*

4. **Section 99 of the Civil Procedure Act, Cap 21** is the appropriate legal provision. It allows a court to correct arithmetical errors in an order or judgment but, not for purpose of reviewing the same, but in line and intent of the trial court. This is what I shall do herebelow.
5. **Paragraph 53** of the Judgment. The plaintiff testified that his salary was Kshs.1,290/= per month, and not Kshs.11,290/=. This typographical error is corrected.

Paragraph 54: Loss of income is correctly worked out as $1290 \times 12 \times 22 = 340,560/=$.

Paragraph 56: Transport. The court applied a transport cost of Kshs.1,000/= per week, not 1,500/=. Nothing to correct. No error at all.

Paragraph 63 – Future medical expenses on wheelchair, not allowed.

The court was clear that the deceased died on his sixth year after the accident.

Paragraph 57 and 60

Only one wheel chair was allowed. That was the first chair at Kshs.63,260/=, as a special damage.

That was the intention of the court. The two paragraphs are therefore corrected to mean, only one chair, not two.

This is evidently so, and correct as reflected in the final awards stated at paragraph 63 (f) of the judgment. **General damages is corrected to read Kshs.4,996,490.**

6. The Grand total of the awards is corrected to read as Kshs.5,100,272/=.

It is so ordered.

Delivered, signed and dated at Nakuru this 22nd Day of October 2019.

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J.N. MULWA

JUDGE