



**Gachiri v Geminia Insurance Co. Ltd (Civil Appeal E353 of 2024)  
[2025] KEHC 14295 (KLR) (Civ) (17 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 14295 (KLR)

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

**CIVIL  
CIVIL APPEAL E353 OF 2024**

**LP KASSAN, J  
SEPTEMBER 17, 2025**

**BETWEEN**

**BENSON MWITHIGA GACHIRI ..... APPLICANT**

**AND**

**GEMINIA INSURANCE CO. LTD ..... RESPONDENT**

**RULING**

1. For determination is the motion dated 31.01.2025 by Geminia Insurance Co. Ltd (hereinafter the Respondent/Applicant) seeking inter alia;
  - a. Spent.
  - b. That the judgement of this Court delivered on 23.01.2025 be reviewed and or varied to the extent that the Small Claims Court where this matter was referred back to has no jurisdiction to hear matters relating to declaratory suits.
  - c. That any other or further orders that this Court may deem fit and just to grant and the error/ omission apparent on the face of the record regarding the commencement date of interest awarded be stated.
  - d. That the costs of the application be awarded to the Respondent/Applicant.
2. The motion is expressed to be brought among others, pursuant to Section 1A, 1B & 3A of the *Civil Procedure Act* (CPA) and Order 45 Rule 1(a) & (b) of the Civil Procedure Rules (CPR) on grounds amplified in the supporting affidavit of even date and supplementary affidavit dated 28.03.2024 sworn by Javan Ombado. The gist of his deposition is that this Court delivered judgment in respect of the appeal herein on 23.01.2025 whereas there is an omission of an important matter which after exercise of due diligence is sufficient enough to apply for review of the said judgment as regards lack of jurisdiction



of the Small Claims Court where the matter was referred back to. That the Small Claims Court no longer having jurisdiction to hear all matters relating to declaratory suits, is a fact that this honorable Court may have overlooked in its judgment. He concludes by stating that it is for the forestated reasons that the Respondent prays that the judgment of this Court delivered on 23.01.2025 be reviewed and or varied so as not to return the matter to the Small Claims Court which is no longer vested with jurisdiction to entertain Benson Mwithiga Gachiri's (hereafter the Appellant) claim as far as declaratory suits are concerned.

3. Benson Mwithiga Gachiri opposes the motion by way of a replying affidavit dated 15.03.2025. He assails the motion as having been filed in bad faith, is misconceived and an abuse of the Court process. He goes on to depose that there is no error or mistake to be corrected whereas the Respondent has misconceived this Court's ratio decidendi in the judgment rendered on 23.01.2025. That the question of jurisdiction has since already been determined in the judgment and that this Court's use of the word disposal at Paragraph 27(b) of the judgment, grants the lower Court the widest berth to deal with any preliminary issue including and not limited to the question of jurisdiction. He states that the appropriate forum on the question of jurisdiction is the lower Court and that the motion has not established any of the requisite grounds to warrant a review of this Court's decision rendered on 23.01.2025. In summation he urges the Court to dismiss the motion with costs.
4. The motion was disposed of by way of written submissions, of which the Court has duly considered.
5. The Applicant's motion invokes inter alia the provisions of Section 3A of the CPA as well as Order 45 Rule 1(a) & (b) of the CPR. The former provision, specifically reserves "the inherent power of the court "to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the court" of which its purport was reasonably addressed by the Court of Appeal in *Rose Njoki King'au & Another v Shaba Trustees Limited & Another* [2018] eKLR and requires not restatement here. That said, the latter provision provides that; -
  - (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 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.
6. The kernel of the Applicant's motion is that there is an error apparent on the face of the record in respect of this Court's decision delivered on 23.01.2025 a consequence of which it seeks to invoke the review jurisdiction of this Court on the same. In *Jason Ondabu t/a Ondabu & Company Advocates, Kullsam Kassam & Zacharia Baraza t/a Siuma Traders v Shop One Hundred Limited* [2020] KECA 134 (KLR) the Court of Appeal stated that:

"An application for review, therefore, involves exercise of judicial discretion. The circumstances in which this Court, as an appellate Court, can interfere with the exercise of judicial discretion are limited".



7. There are a long line of authorities on the principles governing review applications brought under Order 45 (1) of the CPR. In the judgment of Okwengu JA in *Associated Insurance Brokers v Kenindia Assurance Co. Ltd* [2018] eKLR the Court of Appeal stated that:

“It is clear that Order 45 rule 1(1) of the Civil Procedure Rules provides that a mistake or error apparent on the face of the record is one of the grounds upon which an application for review of a decree or order can be granted. In *National Bank of Kenya Ltd v Ndungu Njau* [1997] eKLR, this Court had this to say regarding a review arising from a mistake or error apparent on the face of the record:

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.”

In *Nyamogo and Nyamogo Advocates v. Kogo* [2001]1 E.A. 173 this Court further explained an error apparent on the face of the record as follows:

“An error apparent on the face of the record cannot be defined precisely and 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 a 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.”

See also-: *Multichoice (Kenya) Ltd v Wananchi Group (Kenya) Limited, Communications Commission of Kenya & Kenya Broadcasting Corporation* [2020] KECA 633 (KLR),

8. Before addressing the crux of the motion, it would be apt to place the same into context. At the risk of repetition, the appeal herein was determination vide a judgment rendered on 23.01.2025. Upon considering the record and analyzing the material therein, this Court proceeded to allow the Appellant’s appeal and pronounced itself as hereunder -;

“26. In view of all the foregoing circumstances, the Court is satisfied that there in need to disturb the impugned decision, accordingly.

27. The upshot therefore is that the appeal succeeds. Consequently, the following orders be and are hereby made:

- a. The ruling and order made by Honourable V.K. Momanyi on 6<sup>th</sup> March, 2024 in SCCCOMM No. E422 of 2024 striking out the



Appellant's claim with costs, is hereby set aside and is substituted with an order reinstating the Appellant's claim

- b. The file relating to SCCCOMM No. E422 of 2024 shall be placed before any other Adjudicator other than Honourable V.K. Momanyi for disposal. In the circumstances of the appeal, parties shall each bear their own costs of the appeal.” (sic)

9. By its submissions before this Court, the Respondent argues that there is an error or omission apparent on the face of the record given that as at delivery of the judgment, the Small Claims Court no longer had jurisdiction to deal/hear matters relating to declaratory suits following the decision in *Kenya Orient Insurance Ltd v Otieno* [2024] KEHC 7637 (KLR). Though acknowledging that the issue of jurisdiction was not canvassed before this Court as at delivery of the impugned decision, counsel for the Respondent posited that the issue of jurisdiction can be raised before a Court at any point even on appeal. The of-cited decisions of *Mukhisa Biscuits, Owners of Motor Vessel Lillian 'S'* and the decision in *Muyodi v Industrial and Commercial Development Corporation & Another* (2006) 1 EA 243 were relied on.
10. On its part the Appellant while calling to aid the decision in *Macharia v Maina & 3 others* [2025] KEELC 834 (KLR), counsel argued that the motion is fatally defective on accord of the Respondent's failure and to belated evince, without leave, the impugned judgment sought to be reviewed. And that the Respondent failed to appreciate this Court's ratio decidendi or that the question of jurisdiction had since already been determined. It was thus submitted that the motion fails to meet the threshold to warrant a review of this Court's decision rendered on 23.01.2025. The decision in *Samba t/a JO Samba & Co Advocates v Mengich* [2023] KEHC 26997 (KLR) was called to in the forestated regard.
11. With the above in reserve, it is palpable that the current review motion is premised on the ground of error or mistake apparent on the face of the record, given this Court's pronouncement on appeal and failure to find that the lower Court lacked jurisdiction, pursuant to the decision in *Kenya Orient Insurance Ltd* (supra), to entertain the Appellant's suit. In light of the above, what this Court is called to determine is whether the Respondent by presenting the instant motion has demonstrated the asserted error or mistake apparent on the face of the record. Firstly, the Appellant's contestation concerning competence of the motion is neither here nor there given that the impugned decision sought to be reviewed forms part of the record before this Court. Thus failure to attach the same and or belatedly evincing the same vide the supplementary affidavit, without leave, does not vitiate the competency of the motion.
12. Secondly, it is evident from the grounds of appeal canvassed before the appellate Court and or in the body of the judgment, that the question of jurisdiction was neither canvassed by the appellate Court nor advanced by the Appellant as an issue for consideration in the judgment. Adjunctly, the decision in *Kenya Orient Insurance Ltd* (supra) was equally not placed before the appellate Court towards consideration of the issue of jurisdiction. While I agree with the Respondent that jurisdiction can be raised at any point even on appeal, it must be remembered that review of a decision is anchored on the already rendered decision, on the premise of the grounds within the confines of Order 45 Rule 1 (b) of the CPR. Here, there has been no demonstration that out of an error and or omission apparent on the face of the record this Court inadvertently failed to address itself to the issue of jurisdiction despite the same being canvassed in the Memorandum of Appeal or Respondent's submissions. By asking the Court to address itself on the issue of jurisdiction, vide the instant motion, the Respondent is tacitly inviting this Court to re-sit on the matter already determined.



13. Thirdly, this Court concurs with the Appellant that notwithstanding the finding in Kenya Orient Insurance Ltd (supra), the matter was reverted for disposal before the lower Court, to wit, the appropriate port of call to advance and or canvass the issue of jurisdiction would be the said Court. The suit has yet to be heard on its merits and given that jurisdiction is a preliminary issue in limine, the trial Court vested with matter would be well placed to divest itself of jurisdiction, if so, canvassed before it. I believe that I have reasonably addressed myself of the matter that the Respondent has failed to demonstrate any of the grounds in Order 45 Rule 1 (b) of the CPR and particularly the error apparent on the face of the record, to warrant a review of this Court decision rendered 23.01.2025.
14. In any event, the lower Court, to wit, the matter has been reverted for disposal is well vested to address itself on the question of jurisdiction, where after, if any party may be aggrieved by the resultant determination on the issue, may approach this Court on appeal for resolution. Consequently, the Respondent's motion lacks merit and the same is dismissed with attendant costs.
15. Order Accordingly!

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 17<sup>TH</sup> DAY OF SEPTEMBER 2025**

**L. P. KASSAN**

**JUDGE**

Court Assistant – Caro.

