



REPUBLIC OF KENYA

IN THE HIGH COURT KENYA AT THIKA

CIVIL APPEAL NO. 312 OF 2023

JAMES WACHIRA MWANGI

RESPONDENT/APPELLANT

VERSUS

MBOLEKO LIMITED

APPLICANT/RESPONDENT

RULING

1. By a Notice of Motion application dated 3rd October 2024, the Applicant herein seeks the following orders:-
 - (a) *SPENT*
 - (b) *SPENT*
 - (c) *THAT this Honourable court be pleased to review or set aside the orders made on 5th August 2024, allowing the appeal, and order that the same be reinstated for trial on its merit.*
 - (d) *THAT the costs of this application be provided for.*
2. The application is premised on the grounds set out on its face and on the Supporting Affidavit sworn by the

Applicant's Managing Director who avers that on 5th August 2024, this court delivered a judgement which allowed the appeal and set aside the Ruling/Orders of the Magistrate's Court dated 28th September 2022 in Thika Magistrate's Court MCCMISC/E051/2022 with costs of Kshs. 50,000/=.

3. According to the Applicant, the Honourable court erroneously held that the suit emanated from the Small Claims Court, which lacked jurisdiction to deal with land matters.
4. They aver that the suit had been filed at the Magistrate's Court and not at the Small Claims Court as had been stated by the Honourable court who made an error holding that the Small Claims Court lacked jurisdiction without delving into the issues raised on the Memorandum of Appeal and mistakenly allowed the appeal with costs on the presumption that the suit had originated from the said court.
5. The Applicant argued that there was an apparent error/mistake in the appeal judgement, and as such, this court ought to allow the review of its judgement and correct its mistake in the interest of justice

6. In response to the application, the Applicant filed a Replying Affidavit dated 20th March 2025 opposing the application, stating that it lacked merit and was meant to deny them the fruits of the judgement.
7. They aver that the error stated by the Applicant was not sufficient to change the outcome of the judgement, as they had the option to appeal, which they failed to do.
8. The Respondent avers that the dispute was about land parcel KAKUZI/KIRIMIRI/BLOCK 9/1773 which was based in Murang'a County and was outside the ambit of the Thika Lands registry and that the dispute arising on the land ought to have been filed in Murang'a Court and not Thika Law Courts, which is in Kiambu County, hence the claim of territorial jurisdiction applied.
9. They aver that the suit was an Environment and Land Court suit which was disguised as an ordinary claim, holding that they will be prejudiced if the court dismisses his Appeal, as he was a guarantor and not the beneficiary of the loan, and that he is bound to lose Kshs. 10 Million to recover the disputed sum of Kshs. 362,495/= and that he would be prejudiced from enjoying the fruits of his labour.

10. The Applicant prays that the application be dismissed with costs.

Analysis and Determination

11. Having considered the pleadings on record, this Court finds the following issue for determination:

(a) Whether the Applicant has met the threshold for review of this Court's judgement delivered on 5th August 2024.

12. The power of this Court to review its own judgment is anchored in Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules, 2010, which provide that a review may be granted on the following grounds:-

(a) Discovery of new and important matter or evidence which, after due diligence, was not within the knowledge of the applicant at the time the decree was passed;

(b) Mistake or error apparent on the face of the record;

or

(c) Any other sufficient reason.

13. The law is now settled that review is not an avenue for a dissatisfied party to re-argue its case or to substitute it

for an appeal. The Court of Appeal in **National Bank of Kenya Ltd v Ndungu Njau [1997] KECA 71(KLR)** emphasised that:

“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. It cannot be used to correct an erroneous view of evidence or law, or to substitute a different decision for the one already made...”

14. The Respondent’s main ground for review is that the court erroneously held that the suit originated from the Small Claims Court, which lacked jurisdiction over land matters, whereas it was filed in the Thika Magistrate’s Court. This is supported by the Affidavit of the Respondent’s Managing Director, which asserts that the suit was MCCMISC/E051/2022, a Magistrate’s Court case, not a Small Claims Court matter.
15. They contend that in its judgement of 5th August 2024, the court allowed the Appeal based on this mistaken assumption without addressing the substantive issues in the Memorandum of Appeal. This constitutes an error apparent on the face of the record.

16. The Respondent argues that due to the jurisdictional error, the court's failure to address the Memorandum of Appeal's issues prejudiced their case, as the Appeal was allowed solely on the mistaken belief about the lower court.
17. The Appellant contends that the error is immaterial since the dispute involves land parcel KAKUZI/KIRIMIRI/BLOCK 9/1773 situated in Murang'a County, which falls outside the jurisdiction of the Thika Land Registry. They further argue that the matter properly falls under the ambit of the Environment and Land Court and was therefore wrongly instituted in the Magistrate's Court, raising an issue of territorial jurisdiction.
18. This Court is tasked with determining whether the reference to the Small Claims Court materially affected the outcome of the judgement. Unlike the Small Claims Court, the Magistrate's Court derives authority from the Magistrates' Courts Act, 2015, to handle certain land-related disputes, provided they fall within its territorial and pecuniary limits. Although the Respondent's affidavit does not clearly specify the nature of the claim, the Appellant's assertion that it involves an Environment

and Land Court matter raises a jurisdictional issue that warrants closer examination.

19. Upon perusing the court record, the error is noted, as the case number and court details confirm that the suit was filed in the Magistrate's Court.

20. In **Stephen Gathua Kimani v. Nancy Wanjira Waruingi Civil Appeal 142 of 2012) [2016] KEHC 6883 (KLR)**, the High Court quoted the Supreme Court of India in **Ajit Kumar Rath v State of Orisa & Others 9 Supreme Court Cases 596 at Page 608** and stated:-

“Discussing the scope of review, the Supreme Court of India in the case of *Ajit Kumar Rath vs State of Orisa & Others* [8] had this to say:-

“the power can be exercised on the application of a person on 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 order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A

review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for stabling it. It may be pointed out that the expression “any other sufficient reason” used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule.”

21. In the present case, it is quite clear beyond peradventure that the court inadvertently thought that the Appeal emanated from the Small Claims Court. The misconception resulted in the appeal being allowed without the court interrogating the substantive grounds raised in the Memorandum of Appeal. This situation justifies a review if the court is to uphold justice, as the court must analyze the evidence afresh in order to determine whether the Magistrate’s Court had the requisite jurisdiction to hear and determine the suit before it.

22. The Appellant's contention regarding territorial jurisdiction between Murang'a Law Courts and Thika Law Courts raises a substantive question that ought to be determined through an appeal or during trial, rather than by way of review, since it calls for consideration of evidence and argument beyond an apparent error. Similarly, the Appellant's claim of having been prejudiced in their capacity as a guarantor concerns the substance of the case. It is thus not a matter that can be appropriately addressed through a review.
23. The Respondent's failure to appeal does not bar review, as Section 80 allows review where no appeal has been preferred, provided the application is timely. The application, filed on 3rd October 2024, approximately two months after the judgement, is not unreasonably delayed.
24. This Court is guided by **Pancras T. Swai v Kenya Breweries Ltd [2014] KECA 883(KLR)**, which emphasizes balancing error correction with judgement finality. The error here is clear and material, justifying review to prevent injustice.

25. This Court finds that the error apparent on the face of the record in its judgement dated 5th August 2024 materially affected the court's decision.
26. It would be in the interest of justice that the orders dismissing the appeal be set aside and the appeal be reinstated for determination on its merits, where the parties can address inter alia, any jurisdictional issues, including territorial jurisdiction, as raised by the Appellant.
27. Consequently this court makes the following orders:-
- a) The judgement dated 5th August 2024 is reviewed and set aside.
 - b) The Appeal is reinstated for hearing and determination on merit.
 - c) The costs of this application shall be in the cause.

Dated, Signed and Delivered at Kakamega this 30th day of October 2025.

**A. C. BETT
JUDGE**

In the presence of:

Mr. Injairu for the Appellant

No appearance for the Respondent

Court Assistant: Polycap

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