

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT NAIROBI
ELC NO. 1190 OF 2013

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| MICHAEL NGURURI KIHARA | - | PLAINTIFF |
| VS | | |
| JUSTUS GITUMA t/a DONA SNACKS | - | 1ST |
| DEFENDANT | | |
| JOHN MWANGI MUHIA | - | 2ND |
| DEFENDANT | | |
| KENYA RAILWAYS WORKERS UNION | - | 3RD |
| DEFENDANT | | |

RULING

(In respect of the Plaintiff's application dated 14/7/2025)

1. For determination before this Court is the Plaintiff's application dated 14/7/2025. The application is anchored on Section 1A, 1B and 99 of the Civil Procedure Act as well as Order 45 Rule 1 of the Civil Procedure Rules. Substantively, the Plaintiff prays for Orders that;
 - a. This Honourable Court be pleased to rectify /correct its Judgment delivered on 29/10/2024, as regards the Award of aggravated damages item No. 129 (d) to read Kshs. 1,000,000/= as awarded under paragraph 126 of the said Judgment instead of Kshs. 100,000/= as stated under paragraph 129 (d) of the Judgment.
 - b. The corrected part of the Judgment to reflect the accurate Award of aggravated damages of Kshs. 1,000,000/= be reflected in the Decree.
 - c. The Costs of the application be provided for.
2. The application is based on the grounds on the face of it and further supported by the Affidavit of Charles Njuru Kihara, the Plaintiff's counsel

of even date. Counsel states that Judgment in this case was delivered in favour of the Plaintiff on 29/10/2024. In the Judgment, the Plaintiff was awarded damages under various categories. The Plaintiff received a sum of Kshs. 1,000,000/= for aggravated damages. However, when calculating the total amount payable, the court mistakenly indicated in paragraph 129(d) of the Judgment that the aggravated damages were Kshs. 100,000/=. It is this error that the Plaintiff seeks to correct.

The Replying Affidavit

3. The 1st Defendant opposed the application through the Relying Affidavit of Awuor Mauleen Nelly, its counsel, sworn on 6/10/2025. The 1st Defendant argues that changing the award of Kshs. 100,000/= for aggravated damages at paragraph 129 (d) is not a mere typographical error but a substantive alteration of the Judgment to reflect an award of Kshs. 1,000,000/=:, which amount is excessively high. It is noted that the sum of Kshs. 100,000/= has been stated in both the Judgment and the Decree issued thereon. Counsel asserts that there is no ambiguity or clerical mistake apparent on the face of the application that would justify correction under Section 99 of the Civil Procedure Act.
4. The deponent contends that the Plaintiff is attempting to secretly introduce an appeal by disguising the proposed change as a typographical error. She argues that such changes constitute a revision of the award. She asserts that if there was indeed an error, the proper course of action would have been through a formal appeal, not via the current application. She deposes that the Defendant would be significantly prejudiced if the award were arbitrarily increased without any legal justification.

Plaintiff's Further Affidavit

5. Counsel for the Plaintiff, Charles Njuru Kihara, swore an Affidavit dated 13/10/2025, in response to the 1st Defendant's Replying Affidavit. He states that they only learnt through the Replying Affidavit that the 1st

Defendant extracted a Decree from the Judgment without serving their firm with a draft decree for approval. This is contrary to the provisions of Order 21 Rule 8 (2) of the Civil Procedure Rule and deprived them of the opportunity to identify and correct the clerical error.

6. He states that although the Decree indicates aggravated damages as Kshs. 1,000,000/=, the Judgment at Paragraph 126 indicates Kshs. 1,00,000. He notes that the discrepancy arose from a typographical slip rather than a judicial re-evaluation of the award. He asserts that it is only just and equitable for this court to correct this error in the Decree under Section 99 of the Civil Procedure Act to reflect its true intention. He argues that the Court has jurisdiction to correct such accidental slips at any time. He urges the court to grant the prayers sought, as no prejudice will be occasioned to the Respondent.

Written Submissions

7. By consent of the parties, the application was canvassed through written submissions. Both parties complied. The Plaintiff's submissions are dated 13/10/2025, while the 1st Defendant's submissions are dated 30/10/2025. I have had the opportunity to review the said submissions and consider them in this ruling.

Analysis and Determination

8. Having read and considered the instant Application, Affidavits and the annexures thereto as well as the rival submissions, I am of the considered view that the issue for determination is;

Whether the Plaintiff's application is merited

9. The substantive powers for review of a judgement or an order made by a court are provided for under Section 80 of the Civil Procedure Act; while Order 45 of the Civil Procedure Rules 2010, provide the procedural requirements. Section 80 of the Civil Procedure Act provides that: -

“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.”
10. Order 45 rule 1(1) of the Civil Procedure Rules 2010, on the other hand is explicit 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.”
11. What emerges from the sub rule 1(b) above is that the grounds for review are discovery of new and important matter or evidence, mistake or error apparent on the face of the record or any other sufficient reason.
12. The Plaintiff herein cites ‘error on the face of the record’ as his reason for seeking a review of the court's Judgment. The Plaintiff seeks that the award of Kshs. 100,000/= as aggravated damages, stated at the disposition of the Judgment, be amended to reflect the court's true intention, which awarded aggravated damages of Kshs. 1,000,000/= as shown at Paragraph 126 in the body of the Judgment.
13. The 1st Defendant, on the other hand, argues that the judgment cannot be corrected under Section 99 of the Civil Procedure Act (the slip rule) because it is limited to correcting what would be classified as

human errors—those that any reader of the judgment can easily identify and agree with, such as clerical errors, to give effect to the court's decision. The 1st Defendant asserts that changing the amount for aggravated damages constitutes an alteration of the judgment and, in any case, the proposed amount is excessive.

14. Section 99 of the Civil Procedure Act Cap 21 provides as follows: -

“clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of its own motion or on the application of any of the parties.”

15. Explaining the court’s inherent power to recall its own judgment, Sir Charles Newbold P held in the case of “**Lakshmi Brothers Ltd - Versus - R. Raja & Sons (1966) EA 313**” at page 315 as follows: -

“Indeed, there has been a multitude of decisions by this court, on what is known

generally, as the slip rule, in which the inherent jurisdiction of the court to recall a

judgment in order to give effect to its manifest intention has been held to exist. The

circumstances, however, of the exercise of any such jurisdiction are very clearly

circumscribed. Broadly these circumstances are where the court is asked in the

application subsequent to the judgment to give effect to the intention of the court when

it gave its judgment or to give effect to what clearly would have been the intention of

the court had the matter not inadvertently been omitted. I would here refer to the words

of this court given in **Raniga case (2) (1965) E.A. at p. 703** as follows: -

“A court will, of course, only apply the slip rule where it is fully satisfied that
it is giving effect to the intention of the court at the time when judgment was
given, or in the case of a matter which was overlooked, where it is satisfied,
beyond doubt, as to the order which it would have made had the matter been
brought to its attention.”

These are the circumstances in which this court will exercise its jurisdiction and recall

its judgment, that is, only in order to give effect to its intention or to give effect to what

clearly would have been its intention had there not been an omission in relation to the
particular matter.”

16. The Court of Appeal had earlier on held as follows in “**Vallabhdas Karsandas Raniga - Versus - Mansukhlal Jivraj and Others (1965) 1 EA 700(CAN)**”: -

“.....It appears to us further that the words “at any time” in s. 99 clearly allow the

power of amendments to be exercised after the issue of a formal order....” slip orders”

may be made to rectify omissions resulting from the failure of counsel to ask for costs

and other matters to which their clients are entitledA court will, of course, only

apply the slip rule where it is fully satisfied that it is giving effect to the intention of the

court at the time when the judgment was given or, in the case of a matter which was

overlooked, where it is satisfied beyond doubt, as to the order which it would have made

had the matter been brought before the court when judgment was given on the appeal, the

court would, on application or indeed of its own motion, have made the order for refund

now sought, which was, in our opinion, necessarily consequential on the decision on the

main issues.”

17. I have had occasion to read the impugned Judgment herein by Justice MD Mwangi. The Learned Judge at paragraph 126 stated that;

“In the present case, the court’s finding is that the 1st Defendant acted in blatant violation

of the law and the Plaintiff’s rights as a tenant in occupation. I award the sum of Kshs.

1,000,000/= as aggravated damages for the blatant, unlawful and inhumane actions

committed by the 1st Defendant against the Plaintiff.

18. However, at Paragraph 129 of the Judgment which is the disposition section, the Learned Judge held that;

“In light of the foregoing, the Plaintiff’s claim partially succeeds against the 1st

Defendant. Consequently, I enter judgement in favour of the Plaintiff as against the 1st

Defendant as follows;

(d) The Plaintiff is awarded Aggravated damages Kshs. 100,000/=.”

19. In the case of **Muyodi -vs- Industrial and Commercial Development Corporation and Another EALR [2006] EA 243**, the Court of Appeal while dealing with an issue of review described an error apparent on the face of record as follows:

“In **Nyamogo & Nyamogo v Kogo [2001] EA 174** this Court said that an error apparent

on the face of the record cannot be defined precisely or 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 real distinction between a mere erroneous decision and an error apparent on the face of 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 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 or wrong view is certainly no ground for a review although it may be for an appeal. This laid down principle of law is indeed applicable in the matter before us.”

20. The judgment of the trial court in this matter clearly showed that the court in the body of its judgment awarded the Plaintiff Kshs. 1,000,000/= in aggravated damages. In its disposition section of the judgment, the court awarded a sum of Kshs. 100,000/= for aggravated damages. The question therefore is, does this court have jurisdiction to amend its own Judgment. Certainly, that is an illegality and wrongful. The Civil Procedure Rules provides under Order 21 Rule 3 (3) that: -

“A judgment once signed shall not afterwards be altered or added to save as provided by section 99 of the Act or on review.”

21. The Australian Civil Procedure has provisions in “pari materia” with section 99. As was stated in the case of “**Newmont Yandal Operations Pty Limited - Versus - The J. Aron Corp & The Goldman Sachs Group Inc [2007] 70 NSWLR 411**”,

“the inherent jurisdiction extends to correcting a duly entered judgment where the orders do not truly represent what the court intended. A court will, of course, only apply the slip rule where it is fully satisfied that it is giving effect to the intention of the court at the time when judgment was given or, in the case of a matter which was overlooked, where it is satisfied, beyond doubt, as to the order which it would have made had the matter been brought to its attention.”

22. What is definitely not allowed under Section 99 is to ask the court to review its own decision on appeal, or to redo the case or application, especially when the amendment requires the exercise of independent discretion, involves a genuine difference of opinion, or demands argument and deliberation. Generally, it is also not permitted where the proposed corrections affect the substance of the judgment or order.
23. Considering that the court, in the body of the judgment, categorically awarded a sum of Kshs. 1,000,000/=, and at the disposition section, which flows from the court’s findings in the body, it is my considered view that a sum of Kshs. 100,000/= was a clerical or typographical error. It is an error apparent on the face of the record. It is an error that does not need to be established through a lengthy process of reasoning. The amendment does not require the exercise of independent discretion, nor does it represent a real difference of opinion; nor does it affect the substance of the judgment or order.
24. It is clear that the Plaintiff was awarded a sum of Kshs. 1,000,000/= for aggravated damages as stated in the body of the Judgment. Altering the figure does not amount to sitting on the court's appeal. The 1st Defendant’s assertion that the sum of Kshs. 1,000,000/= is excessive, in my view, constitutes a ground of appeal if dissatisfied with the court's decision.
25. Therefore, I find that the Honourable Court erred by stating at Paragraph 129 (d) that the aggravated damages is a sum of Kshs.

100,000/=. I suggest it be amended to read: the Plaintiff is awarded Aggravated damages of Kshs. 1,000,000/=.

26. Final orders for disposal

The upshot of the foregoing is that the Plaintiff's application dated 14/7/2025 is meritorious. I proceed to order as follows: -

- a. That Judgment delivered on 29/10/2024, as regards the Award of aggravated damages item No. 129 (d) is hereby rectified to read Kshs. 1,000,000/= (Kenya Shillings One Million Only) as awarded under paragraph 126 of the said Judgment instead of Kshs. 100,000/=(Kenya Shillings One Hundred Only).
- b. The Decree issued therefrom shall equally be rectified to reflect the Award of aggravated damages as Kshs. 1,000,000/=.
- c. The error having been on the part of the court, each party shall bear its own costs.

27. It is so ordered

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 18TH DAY OF NOVEMBER 2025 VIA MICROSOFT TEAMS.

**J G KEMEI
JUDGE**

Delivered online in the presence of;

1. Mr Kihara for the Plaintiff
2. Ms Ndegwa HB for Ms Awuor
3. N/A for the 2nd and 3rd Defendant
4. C/A - Ms. Yvette Njoroge