



REPUBLIC OF KENYA



KENYA LAW
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**Summer Autoworld Limited & another v Gitwara (Civil Appeal
E158 of 2022) [2025] KEHC 15904 (KLR) (3 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 15904 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E158 OF 2022
RN NYAKUNDI, J
NOVEMBER 3, 2025**

BETWEEN

SUMMER AUTOWORLD LIMITED 1ST APPELLANT

NJUGUNA GACHEGWE 2ND APPELLANT

AND

GODWIN GITWARA RESPONDENT

RULING

1. Before the Court is a Notice of Motion dated 29th July 2025 brought under Section 1A, 1B and Section 80 of the *Civil Procedure Act* 2010, Order 45 Rule 1 and 2 Order 51 Rule 1 and 4 of the Civil Procedure Rules, and all other enabling provisions of the law. The Applicant seeks for the following orders:
 - a. Spent
 - b. That this Honourable Court do review and correct its judgment delivered on 23rd July 2025 to reflect that liability was apportioned at 70:30 in favour of the Respondent, and not in favour of the Applicants as erroneously stated.
 - c. That this Honourable court do award costs of this application to the Applicant.
2. Which application is premised on the following grounds:
 - a. That there is an error apparent on the face of the record in the court's judgment delivered on 23rd July 2025.
 - b. That the Honourable Court erroneously stated at paragraph 38 of its judgment that liability to be apportioned at 70:30 in favour of the Respondent as supported by the reasoning and findings in the judgment.



- c. That the said misstatement is clerical in nature and does not go to the merits of the court's reasoning of the judgment.
 - d. That the said misstatement is clerical in nature and does not go to the merits of the court's reasoning or findings.
 - e. That this application has made timeously, in good faith, and solely for the purposes of correcting the said error.
3. Further the application is supported by the annexed Supporting Affidavit of Godwin Gitwara who deponed as follows:
- i. That I am the Respondent/Applicant herein and as such, I am well seized of the facts and circumstances of this matter hence competent to swear this affidavit.
 - ii. That I am aware on 23rd July 2025 this Honourable Court delivered its judgment in the above appeal.
 - iii. That my advocates on record inform me that in paragraph 38 of the said judgment the court erroneously stated that liability was apportioned at 70:30 in favour of the Appellants.
 - iv. That my advocates on record further informed me, that a plain reading of the judgment reveals that the court reasoning supported an apportionment of 70:30 in favour of the (respondent) myself and the contrary statement was an inadvertent error.
 - v. That I am aware the said error is apparent on the face of the record and its correction does not require re-evaluation of evidence or reconsideration of merits.
 - vi. That my advocates on record inform me that this court is vested with the powers and discretion to review its own decisions where sufficient cause has been demonstrated, including where there exists an error apparent on the face of the record.
 - vii. That unless the court reviews and corrects the error I stand to suffer substantial prejudice and miscarriage of justice in the enforcement of the judgment.
 - viii. That the application has been brought without undue delay and in good faith and no prejudice will be occasioned to the Appellants if the orders sought are granted.
 - ix. That it is in the interest of justice and equity that this Honourable Court review its judgment and record be corrected to reflect the correct fining on liability
4. In response to the application the Respondent through Godwon Gitwara swore a replying affidavit stating as follows:
- a. That I am the Respondent herein and as such I am well seized of the facts and circumstances of this matter hence competent to swear this affidavit.
 - b. That I have read the Applicant's application dated 29th July 2025 the same also explained to me by my advocates on record M/s Morgan Omusundi Law Firm Advocates which Counsel I verily believe to be true and further that I have understood and familiarized myself with the imports therein and no wish to respond as follows:
 - c. That I am aware and advised by my advocates on record which advice I believe to be true that the present application is incompetent, improper and has not been brought in good faith and the same is fatally defective.



- d. That I am aware on 23rd July 2025 this Honourable Court delivered its judgment in the above appeal.
- e. That my advocates on record inform me that in paragraph 38 of the said judgment the court erroneously stated that liability was apportioned at 70:30 in favour of the Appellants.
- f. That the plain reading of the judgment reveals that the court reasoning supported an apportionment of 70:30 in favour of the (respondent) myself and the contrary statement was an inadvertent error.
- g. That I am aware the said error is apparent on the face of the record and its correction does not require re-evaluation of evidence or reconsideration of merits.
- h. That this court is vested with the powers and discretion to review its own decisions where sufficient cause has been demonstrated, including where there exists an error apparent on the face of the record.
- i. That unless the court reviews and corrects the error I stand to suffer substantial prejudice and miscarriage of justice in enforcement of the judgment.
- j. That this application has been brought without undue delay and in good faith and no prejudice will be occasioned to the Appellant if the orders sought are granted.
- k. That it is in the interest of justice an equity that this Honourable court review its judgment and record be corrected to reflect the correct finding on liability.
- l. That I swear this affidavit in vehement opposition to the instant application by the Appellants which I believe is unmerited and made in bad faith and I so pray that the same be dismissed with costs to me and that my application dated 29.7.2025 be allowed.

Decision

5. The law under Section 80 of the Law of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules as read with Section 1(A) of the same Act on overriding objective is very explicit that a Judgment or a ruling of the court can be reversed or modified by the same court or one with competency and jurisdiction with the one which pronounced itself on the impugned decision.
6. The aforesaid provisions state that the impugned judgment or ruling can be reviewed if the aggrieved party doesn't think that it is necessary to file an appeal on the following grounds: On error of fact or law or mistake apparent on the face of the record, or on discovery of new and important matter or evidence which were not within the knowledge of the applicant or could not be produced at time when the judgment was delivered or decree was passed rendering it necessary to invoke the review jurisdiction. In so far as an error or mistake apparent on the face of record is concerned the law stipulates that the same must be self-evident and does not require a process of reasoning. This area of law should not be confused with the appeal process which requires an appeal's Court to re-examine the evidence by conducting some kind of fresh trial generally described as a re-hearing.
7. The law on this area is now well settled as can be appreciated from the following caselaw the court in *Nyamego and Nyamego Advocates v Moses Kipkolum Kogo*, Civil Appeal Number 322 of 2000 (2001) 1 EA 173 (Gicheru, Tunoi and Lakha JJA on 11 June 2001) (CAK)
 - a. 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.



- b. There is a distinction between a mere error and an error apparent on the face of the record.
- c. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, clear case of error apparent on the face of the record would be made out.
- d. The 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 neither can a view which is adopted by the court in the original record, if a possible one, be an error apparent on the face of the recovered even though another view is also possible: mere error or wrong or an erroneous view of evidence or of law is certainly no ground for a review although it may be a ground for appeal. See AIR Commentaries on the Code of Civil Procedure by Chitale and Rao (4th Edition) volume 3 page 3227. See also Odunga's Digest on Civil Case Law and Procedure (3rd Edition) vol. 9 page 6934. Likewise in pg 6949 by the same learned Judge he opined as follows:

“In an application for review the Judge is not sitting as an appellate court and in that situation if the Judge is satisfied that the tests for review laid down under Order 42 rule 1 are met, it is expected of him to grant the application by effecting the relevant and necessary rectification and corrections sought in the judgment which in warranting circumstances, may be varied as a result of the new and important matters discovered; otherwise the judgment is not quashed in a review application.

- 8. This is what review does not do as observed by the Court in Sir Hari Shankar Pal and another vs Anath Nath Mitter and Others [1949 FCR 36]

“That a decision is erroneous in law is certainly no ground for ordering review. If the Court has decided a point and decided it erroneously, the error could not be one apparent on the face of the record or even analogous to it. When, however, the court disposes of a case without advertent to or applying its mind to a provision of law which gives it jurisdiction to act in a particular way, that may amount to an error analogous to one apparent on the face of the record sufficient to bring the case within the purview of Order XLVII, Rule 1, Civil Procedure Code.”

- 9. What the above authorities demonstrate are that the jurisdiction and scope of review under Section 80 of the Civil Procedure Act and Order 45 rule 1 is not that of an appeal and it can only be entertained only if the application satisfies the criteria in the rules and the respective order on review which has been clearly stated elsewhere in this ruling. The power of review as known in law can only be exercised for correction of a mistake but not to substitute a view. That rules out a mere possibility of two views on the subject matter cannot be a ground for review.
- 10. This court delivered its judgment on 23rd day of July 2025 pronouncing itself as follows:

“In the end the court the award on damages and liability is entered in the following terms:

- i. General damages Kshs 450,000/=
- (ii) Special Damages Kshs 9,600/=
- (ii) Total Kshs 459,600/=
- (iv) Less 30% Kshs 237,880/=
- (v) Sub-total Kshs 321,720/=



- (vi) Plus costs and interest being special damages from the date of filing suit whereas general damages shall accrue interest from the date of judgment of the trial court.”

11. In the application at bar the applicant has drawn to the attention of this court the impugned paragraph of the judgment which reads as follows:

“ That my advocates on record inform me that in paragraph 38 of the said judgment the court erroneously stated that liability was apportioned at 70:30 in favour of the Appellants.

That the plain reading of the judgment reveals that the court reasoning supported an apportionment of 70:30 in favour of the (respondent) myself and the contrary statement was an inadvertent error.”

12. The essentials of the provisions of Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 have been met by the applicant and in so far as the grievance is concerned there is merit to grant the review of paragraph of the impugned judgment to read as follows: That liability was apportioned at 70%:30% in favour of the Respondent and not the Appellants as initially indicative of the said judgment. The Court is therefore satisfied that there is material error manifest on the face of the judgment which undermines its soundness or results in miscarriage of justice. For those reasons the final judgment of this court delivered on 23rd day of July 2025 shall read as follows:

That in the end the liability be sustained at a ratio of 70%:30% as against the Respondent and the Appellants to shoulder 30%. That on award of damages the terms entered remains as follows:

- i. General damages Kshs 450,000/=
- (ii) Special Damages Kshs 9,600/=
- (ii) Total Kshs 459,600/=
- (iv) Less 30% Kshs 237,880/=
- (v) Sub-total Kshs 321,720/=
- (vi) Plus costs and interest being special damages from the date of filing suit whereas general damages shall accrue interest from the date of judgment of the trial court.”

13. As a consequence of the review application the original judgment dated 23rd day of July 2025 be and is hereby amended to correct the error or mistake on the face of the record of apportionment of liability to read 70%:30% between the Respondent and Appellants to this appeal. For avoidance of doubt paragraph 38 of the judgment and subsequent paragraph 49 stands reviewed accordingly.

14. It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 3RD DAY OF NOVEMBER 2025.

.....

R. NYAKUNDI

JUDGE

