



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nkoora v Kuyuoni & 2 others (Civil Appeal E010 of 2024)  
[2025] KEHC 17752 (KLR) (28 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17752 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAROK  
CIVIL APPEAL E010 OF 2024  
CM KARIUKI, J  
NOVEMBER 28, 2025**

**BETWEEN**

**LESINKO OLE SUYIANKA NKOORA ..... APPELLANT**

**AND**

**LESIAMON OLE KUYUONI ..... 1<sup>ST</sup> RESPONDENT**

**LESIKITOI TILAL OLE LETOLUO ..... 2<sup>ND</sup> RESPONDENT**

**RAPHAEL RISA TAKUNA ..... 3<sup>RD</sup> RESPONDENT**

*(Being an appeal against the judgment of Hon. D. Ngayo (R.M.)  
delivered on 29/01/2024 in Narok SCCCOMM NO. E001 OF 2023)*

**RULING**

**Introduction**

1. Before this Court is a Notice of Motion dated 23rd May 2025, supported by the Supporting Affidavit of Lesinko Ole Suyianka Nkoora, sworn on even date, in which the Appellant/Applicant seeks a review of this Court's judgment delivered on 24th April 2025 in Civil Appeal No. E010 of 2024. The application is brought under Sections 1A, 1B, 3A, and 80 of the Civil Procedure Act, Section 38 of the Small Claims Court Act, and Order 45 of the Civil Procedure Rules.
2. In the impugned judgment of 24th April 2025, this Court (Hon. Charles M. Kariuki, J.) determined the appeal arising from the judgment of the Small Claims Court delivered on 29th January 2024. The trial court had found in favour of the Respondents and awarded Kshs. 60,000/- together with interest. The Court, upon evaluating the six grounds of appeal, upheld the trial court's finding, holding that the Respondents had proved their claim on a balance of probabilities and that the Appellant had not rebutted the claim regarding the sums allegedly advanced under the disputed agreement.



3. In the said motion, the Appellant/Applicant prays that the Court be pleased to review and set aside its judgment and consequently allow the appeal. The application is premised on the grounds set out on the face of the motion and the supporting affidavit of Lesinko Ole Suyianka Nkoora, in which the Applicant contends that the Court failed to address several substantive issues raised in the appeal.
4. The Applicant asserts, among other grounds, that the Court did not consider the question of the Respondents' legal capacity to institute and prosecute the suit before the Small Claims Court, nor did it address issues relating to the validity and execution of the underlying contract, the authority of the Respondents to act on behalf of the Self-Help Group, or whether the claim was properly brought in a personal capacity rather than on behalf of the contracting entity. It is further contended that the judgment, if left unreviewed, is likely to result in an absurdity by directing payment to individuals rather than the Self-Help Group that was allegedly the contracting party.
5. The record shows that the Respondents were duly served with the application and hearing notice on 28th August 2025 through their advocates, Kubwa & Co. Advocates, as evidenced by the Affidavit of Service sworn on 16th October 2025 by Hellen Muchiri, an Advocate of the High Court. Despite proper and effective service, the Respondents did not file any Reply or Submissions in opposition to the application.

#### **Directions of the court**

6. The application was canvassed by way of written submissions. The applicant has filed. The respondents have not filed.

#### **The Applicant's Submissions**

7. The Applicant submits that the review is properly brought under Order 45 of the Civil Procedure Rules, 2010, and Section 80 of the *Civil Procedure Act*, Cap. 21, which empower the Court to review its own judgment where an error is apparent on the face of the record or for any other sufficient reason. An error apparent on the face of the record is one that is manifest and self-evident, as expounded in Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] KEHC 6379 (KLR), and further emphasized in Nyamogo & Nyamogo v Kogo. Errors that require detailed examination or argument cannot be treated as errors apparent on the face of the record.
8. The Applicant contends that the Honourable Court erred in addressing matters of fact contrary to the provisions of Section 38 of the *Small Claims Court Act*, which limits appeals from the Small Claims Court to matters of law only. By evaluating evidence and concluding on the Appellant's liability, the Court exceeded its appellate mandate. This position is supported by the decisions in Kinonge v Thika Water & Sewerage Co. Limited [2025] KEHC 5067 (KLR), and Luka v China Wu Yi Company Limited [2023] KEHC 23708 (KLR), where it was held that appellate courts in such matters may only intervene where the evidence does not reasonably support the trial court's conclusions.
9. The Applicant further submits that the Court erred by failing to determine the validity of the contract. For a contract to be valid, the essential elements of capacity to contract, offer, acceptance, consideration, and intention must be satisfied. The Respondents failed to prove that they had authority to bind the Self-Help Group, a necessary condition under the law of agency. The trial court compounded this error by enforcing a contract without foundational evidence of the agents' capacity to bind the Group.
10. On the issue of capacity to sue, the Applicant submits that Self-Help Groups, as unincorporated associations, have no legal capacity to sue in their own name. Any action must be instituted in a



representative capacity with authorization from members, as emphasized in *Senti Kumi Community Self Help Group v Kenya Maritime Authority & Another*, Mombasa ELC Petition No.2 of 2019. The Respondents failed to establish such authority or produce a members list, rendering the suit a nullity ab initio.

11. The Applicant also submits that the contract in question was not witnessed, raising a formal defect going to its validity. Enforcing an unwitnessed contract constitutes a patent legal defect, which the appellate Court failed to address. Furthermore, the trial court ignored the Appellant's contention that the Respondents had breached the contract, a material issue affecting enforceability, as emphasized in *Technology Today Limited v Kimenju & Another* [2024] KEHC 7082 (KLR).
12. In conclusion, the Applicant submits that the judgment of 24th April 2025 contains errors apparent on the face of the record, including exceeding the limits of appellate jurisdiction, failing to address the validity and witnessing of the contract, neglecting the Respondents' lack of capacity to sue, and disregarding the Appellant's claims of breach. These errors, if left uncorrected, would result in a miscarriage of justice. The Applicant therefore respectfully requests this Honourable Court to review its judgment, address the legal issues raised, and set aside or amend the order to reflect a lawful outcome.

### **Analysis And Determination.**

13. Having considered the Notice of Motion, the supporting affidavit, the written submissions filed by the Applicant, and the record of appeal, this Court finds that the following issues arise for determination in this review application:
  - i. Whether the Respondents had the legal capacity to sue.
  - ii. Whether the contract relied upon by the Respondents was valid and enforceable.
  - iii. Whether this Court exceeded its appellate jurisdiction in the original judgment.
  - iv. Whether the alleged errors in the original judgment constitute errors apparent on the face of the record or other sufficient reason for review.
  - v. Whether the Applicant is entitled to the relief sought.

### **1. Legal Capacity of the Respondents to Sue**

14. It is well established under Kenyan law that unincorporated associations, such as Self-Help Groups, do not have legal personality and therefore cannot sue in their own name. Any legal action must be instituted by members or representatives duly authorized by the group. In *Senti Kumi Community Self Help Group v Kenya Maritime Authority & Another*, it was held that failure to demonstrate such authorization renders the suit a nullity ab initio.
15. In the instant matter, the Respondents failed to provide any evidence of authorization, such as a membership list, resolution, or mandate from the group. The supporting affidavit merely asserts that they represent the group, without substantiation. Accordingly, the Court finds that the Respondents lacked legal capacity to sue, and this is a reviewable error.

### **2. Validity and Enforceability of the Contract**

16. For a contract to be valid, Kenyan law requires: (i) capacity to contract; (ii) offer; (iii) acceptance; (iv) consideration; and (v) intention to create legal relations (*Kenya Airways Ltd v Kenya Association of Air Operators* [2020] eKLR). Further, authority to bind another, especially where an agent purports



to act on behalf of an unincorporated association, must be established (*Technology Today Limited v Kimenju & Another* [2024] KEHC 7082 (KLR)).

17. In this case, the Respondents did not demonstrate that they had authority to bind the Self-Help Group. Moreover, the contract relied upon was unwitnessed, raising a formal defect. The trial court nevertheless enforced the agreement, without any foundational proof that the essential elements were met. This constitutes an error apparent on the face of the record.

### 3. Exceeding Appellate Jurisdiction

18. The *Small Claims Court Act*, under Section 38, limits appeals to questions of law. In *Kinonge v Thika Water & Sewerage Co. Limited* [2025] KEHC 5067 (KLR) and *Luka v China Wu Yi Company Limited* [2023] KEHC 23708 (KLR), it was held that appellate courts cannot reassess evidence or make findings of fact in such appeals.
19. The Court, in the judgment of 24th April 2025, evaluated evidence and concluded on liability, exceeding its jurisdiction. This is a substantive error, reviewable under Order 45 of the Civil Procedure Rules.

### 4. Error Apparent on the Face of the Record

20. As held in *Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya* [2019] KEHC 6379 (KLR), an error apparent on the face of the record is one that is manifest and self-evident. Here, the errors—lack of capacity to sue, unwitnessed contract, and exceeding appellate mandate—are clear and self-evident. These constitute sufficient grounds for review under Section 80 of the *Civil Procedure Act*.

### 5. Conclusion and Relief

21. In the circumstances, this Court finds that:
- i. The Respondents lacked legal capacity to sue;
  - ii. The contract relied upon was not validly executed and enforceable.
  - iii. The Court exceeded its jurisdiction in the original judgment.
  - iv. These errors are apparent on the face of the record and warrant review.

### Order

22. Accordingly, the Court orders as follows:
- a. The Judgment of 24th April 2025 in Civil Appeal No. E010 of 2024 is reviewed and set aside.
  - b. The matter is remitted to the Small Claims Court for determination in accordance with law, ensuring that the issue of authority and capacity of parties is properly addressed.
  - c. No order as to costs, given that the Respondents did not file a reply or submissions.
23. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH THE TEAMS APPLICATION,  
THIS 28<sup>TH</sup> DAY OF NOVEMBER, 2025**

.....  
**CHARLES KARIUKI**



**JUDGE**

