



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mwaniki v Wainaina (Civil Appeal E187 of 2023)  
[2025] KEHC 18328 (KLR) (4 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18328 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CIVIL APPEAL E187 OF 2023  
FN MUCHEMI, J  
DECEMBER 4, 2025**

**BETWEEN**

**SAMUEL KIRAGU MWANIKI ..... APPELLANT**

**AND**

**BRIAN GITAU WAINAINA ..... RESPONDENT**

**RULING**

1. The application dated 3<sup>rd</sup> October 2025 seeks for orders of review of this court's judgment delivered on 27<sup>th</sup> February 2025 and in particular the order of costs.

**Appellant's /Applicant's Case**

2. The applicant states that the instant court rendered its judgment on 27<sup>th</sup> February 2025 finding in his favour and interfered with the lower court's award of Kshs. 1,600,000/- substituting it with an award of Kshs. 1,000,000/-. The applicant further states that the learned Judge erroneously awarded the respondent costs of the appeal despite him being the successful party.
3. The applicant argues that he had sought costs of the appeal in his memorandum of appeal and being the successful litigant, costs of the appeal ought to have been awarded to him.
4. The respondent did not file a replying affidavit to the application but his counsel informed the court that he and counsel for the applicant were present in court while the court was delivering the judgment and the court indicated that the applicant was awarded half of the costs on appeal.

**The Law**

**Whether the orders sought for review are warranted**

5. Order 45 of the Civil Procedure Code sets out the parameters for an application for review as follows:-



Rule 1 (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 order made or made the order without unreasonable delay.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case which he applies for the review.

6. It then follows that Order 45 provides for three circumstances under which an order for review can be made. The applicant must demonstrate to the court that there has been 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. Secondly, the applicant must demonstrate to the court that there has some mistake or error apparent on the face of the record. The third ground for review is worded broadly; an application for review can be made for any other sufficient reason.
7. The applicant has grounded his application on an error apparent on the face of the record. On perusal of the record, the court found in favour of the applicant on appeal and substituted the award of Kshs. 1,600,000/- with Kshs. 1,000,000/-. Paragraph 31 indicates that the respondent is awarded the costs of this appeal however when rendering the judgment, the learned Judge stated that the applicant was awarded half of the costs of the appeal. It is evident that the issue of costs as stated in paragraph 31 is an apparent error on the face of the record.
8. The error on assessment of damages for loss of amenities which this court rectified on appeal by reducing the award, cannot be blamed on any of the parties. It is therefore in the interests of justice that the court considers this issue and rectifies the said error.
9. Paragraph 31 of the judgment delivered on 27<sup>th</sup> February 2025 in this appeal is hereby amended to read: Each party will meet their own costs of this appeal.
10. It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 4<sup>TH</sup> DAY OF DECEMBER 2025.**

**F. MUCHEMI**

**JUDGE**

