



REPUBLIC OF KENYA



KENYA LAW
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**Muturo v Obala (Civil Appeal E011 of 2025)
[2025] KEHC 19055 (KLR) (19 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 19055 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL E011 OF 2025**

AC BETT, J

DECEMBER 19, 2025

BETWEEN

ELVIS ANTONY MUTORO APPELLANT

AND

NICHOLAS KUTA OBALA RESPONDENT

RULING

1. The Appellant/Applicant filed a Notice of Motion dated 7th May 2025 seeking a review of the court's orders dated 20th February 2025 in which the court summarily rejected the appeal on the ground that it was filed out of time.
2. The application was opposed by the Respondent.
3. Under Section 79G of the *Civil Procedure Act*, a party who is aggrieved by a decision of the subordinate court must file leave to the High Court within 30 days from the date of the decree. Any appeal filed outside the stipulated time is dead on arrival.
4. Judgement herein is delivered on 11th December 2024 and the Appellant filed the appeal on 3rd February 2025.
5. The issue before court is whether there is an error apparent on the face of the record to justify a review.
6. Section 80 of the *Civil Procedure Act* and Order 45 Rules (1) and (2) provide the legal and procedural framework for applications for review. Order 45 (1) (2) provide:-
 1. Application for review of decree or order [Order 45, 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 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 on which he applies for the review.

To whom applications for review may be made [Order 45, rule 2]

(1) An application for review of a decree or order of a court, upon some ground other than the discovery of such new and important matter or evidence as is referred to in rule 1, or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the judge who passed the decree, or made the order sought to be reviewed.

(2) If the judge who passed the decree or made the order is no longer attached to the court, the application may be heard by any other judge who is attached to that court at the time the application comes for hearing.

(3) If the judge who passed the decree or made the order is still attached to the court but is precluded by absence or other cause for a period of 3 months next after the application for review is lodged, the application may be heard by such other judge as the Chief Justice may designate.”

7. It is the Applicant’s contention that there is an error apparent on the face of the record as the appeal was filed on the 30th day and was therefore within time.

8. Order 50 Rule 4 of the Civil Procedure Rules provides that:-

“ Except where otherwise directed by a judge for reasons to be recorded in writing, the period between the twenty-first day of December in any year and the thirteenth day of January in the year next following, both days included, shall be omitted from any computation of time (whether under these Rules or any order of the court) for the amending, delivering or filing of any pleading or the doing of any other act:

Provided that this rule shall not apply to any application in respect of a temporary injunction.”

9. Flowing from the provisions of Order 50 Rule 4, it means that the days between 21st December and 13th January of each year, which is considered a High court vacation, shall not be taken into account when computing time for purposes of compliance with court process that have set timelines which include the time within which one should file an appeal in the High Court against a decision of the subordinate court.

10. The *Interpretation and General Provisions Act*, Cap 21 Laws of Kenya stipulates that when computing time, it is done exclusively of the first day and inclusively of the last day. This means that the day the decision is pronounced is not counted.

11. I have reviewed the application and I note that the appeal was indeed filed on the 30th day after the decision was pronounced. This means that the appeal was filed, just on time albeit at 20.17 hours which is after close of business.



12. The Court of Appeal considered the issue of computation of time and the purpose of Order 50 Rule 4 of the Civil Procedure Rules and rendered itself in *Kenya Commercial Bank Limited v. Fredrick Mallya* [2016] KEHC 548 (KLR), where it held that:-

“Order 50 Rule 4 of the Civil Procedure Rules provides that the period between the 21st day of December in any year and the 13th day of January in the year next following shall be omitted from computation of time. Taking this provision into consideration, the appellant ought to have lodged its appeal on 26th January 2016. The appellant filed its Memorandum of Appeal on 25th January 2016. Even without considering the reasons given by the appellant for the purported delay in filing the Appeal, it is apparent that it was well within the time limit contrary to the assertions made by the Respondent.”

13. The Applicant has relied on the first ground in his application for review, and that is that there is an error apparent on the face of the record. The Court of Appeal considered what constitute an error apparent on the face of the record in the case of *Mayodi v. Industrial and Commercial Development Corporation & Another* [2006] 1 EA 243 quoted in *Charles Ruto Karite v. St. Mary’s Teachers Training College* [2023] KEHC 5 (KLR) and had this to say:-

“...In *Nyamogo & Nyamogo -vs- 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...”

14. Having revisited the file, the court is satisfied that it erred in computing time.
15. The mistake in computation of time cannot be said to be an error apparent on the face of the record because it is not one that can be deduced without delving into the court calendar. Such an error should be obvious and should not require re-appraisal or lengthy submissions such as the present application has invited.
16. Nevertheless, the “slip rule” under Order 45 provides that a review can be made where there exists any other sufficient reason.
17. Under Section 80 of the *Civil Procedure Act*, the court has unfettered discretion to make an order on review as it thinks fit and necessary for the ends of justice. Therefore “for any sufficient reason” needs to be considered in the context of this unfettered discretion and in the spirit of Article 159 (2) (a) of *the Constitution* of Kenya.
18. The Applicant herein suffered prejudice through no fault of his own by the court’s erroneous computation of time and subsequent summary rejection of his appeal. If the court declines his application for review, he would be forced to proceed to the Court of Appeal then back to this court



for hearing of the substantive appeal. This would be against the spirit of our Constitution that calls for expeditious disposal of suits.

19. In the end, I hold that the Applicant has sufficient reason for grant of review. I allow the application and grant the following orders:-
- a. That the order dated 20th February 2025 in which the appeal was summarily rejected is hereby reviewed and set aside.
 - b. That the costs of the application shall be in the cause.
20. Those are the orders of the court.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 19TH DAY OF DECEMBER 2025.

A. C. BETT

JUDGE

In the presence of:

Ms. Maruti for the Appellant/Applicant

No appearance for Mr. Kariah for the Respondent

Court Assistant: Polycap

