



REPUBLIC OF KENYA



KENYA LAW
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**Motrex Limited v Dahir & another (Civil Case E134 of 2023)
[2025] KEMC 320 (KLR) (16 December 2025) (Ruling)**

Neutral citation: [2025] KEMC 320 (KLR)

**REPUBLIC OF KENYA
IN THE MAKINDU LAW COURTS
CIVIL CASE E134 OF 2023
YA SHIKANDA, SPM
DECEMBER 16, 2025**

BETWEEN

MOTREX LIMITED PLAINTIFF

AND

FARAH ALI DAHIR 1ST DEFENDANT

MATANO RASHID 2ND DEFENDANT

RULING

1. The plaintiff herein moved the court vide an application dated 25/11/2025 brought pursuant to the provisions of Order 45 rule 1 of the Civil Procedure Rules and sections 1A, 1B, 3A and 80 of the Civil Procedure Act. The application seeks the following orders:
 1. Spent;
 2. That this honourable court be pleased to set aside, review and/or correct its Judgement dated 25th November, 2025 and all consequential orders thereto and thereafter proceed to deliver Judgement on merit;
 3. That this honourable Court be pleased to grant any such further other orders as it may deem just, appropriate and expedient in the interest of Justice;
 4. That costs of this application be in the cause.
2. The application is supported by the affidavit sworn by counsel for the plaintiff and is premised on the following general grounds:
 - a. That Judgement was delivered on the 25th November, 2025 and consequently the Plaintiff's suit was dismissed;



- b. That the trial court made an error when it stated that the Plaintiff had not produced receipts to prove its claim for Special damages;
 - c. That the Plaintiff had on the 10th February, 2025 filed and served its FURTHER LIST OF DOCUMENTS DATED 10TH FEBRUARY, 2025 which it attached receipts which it incurred to repair its motor vehicle;
 - d. That the said Plaintiff's Further List of Documents dated 10th February, 2025 was further produced by consent vide the application dated 25th July, 2025 which was filed before this court;
 - e. That the said Plaintiff's Further List of Documents dated 10th February, 2025 are visibly on the CTS and are part of the Court record. The date and time stamp indicated on the CTS is 2025-02-10 14:57:05;
 - f. That the finding of the court that the Plaintiff did not produce any receipts to prove special damages it incurred to repair its motor vehicle yet the same was filed in court on 10/02/2025, is an apparent error/mistake on the face of the record;
 - g. That it is in the interest of Justice that this Court Judgement and all consequential orders are set aside and or review and Judgement be delivered on merit.
3. In the affidavit in support of the application, counsel reiterated the grounds contained on the face of the application and attached documents in support thereof.

The Defendant's Response

4. The defendant did not oppose the application.

Main Issues For Determination

5. In my opinion, the main issues for determination are as follows:
- i. Whether there are sufficient grounds to warrant a review of the judgment herein;
 - ii. Whether the plaintiff is entitled to the reliefs sought;

Analysis And Determination

6. Since the application was not opposed by the defendant, no submissions were made by the parties. I will proceed to determine the application.

The Legal Provisions

7. Order 45 rule 1 of the Civil Procedure Rules provides 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.”

8. Section 1A of the *Civil Procedure Act* provides as follows:

- (1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
- (2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
- (3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court”.

9. Section 1B of the *Civil Procedure Act* provides thus:

- (1) For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims— (a) the just determination of the proceedings;
- (b) the efficient disposal of the business of the Court;
- (c) the efficient use of the available judicial and administrative resources;
- (d) the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and
- (e) the use of suitable technology”.

10. Section 3A of the *Civil Procedure Act* provides:

Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court”.

11. Section 80 of the *Civil Procedure Act* provides:

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.”

Case Law on the subject

The application is premised on the main ground that there is an error apparent on the face of the record. The error is that the court held that no receipts were produced in evidence yet there is a further list of documents which was filed and adopted in evidence, containing the receipts for the repair costs. I will highlight some of the authorities as follows.

1. John Peter Kamau Ruhangi v Kenya Reinsurance Corporation [2012] eKLR.

In this case, the Court of Appeal held that Order 44 Rule 1 of the Civil Procedure Rules (Now Order 45 rule 1) sets out the purview of the review jurisdiction. That a



point outside that purview is not a ground for review. The court further held that a point which may be a good ground of appeal like an erroneous view of law or evidence is also not a ground for review. That a court reached an erroneous conclusion because it proceeded on an incorrect exposition of the law or misconstrued a statute or other provision of law is no ground for review. All these are grounds of appeal. The court held, inter alia, that:

“.....an error apparent on the face of the record is not one which is to be established by a long drawn process of reasoning or on points where there could possibly be two opinions. This Court made that quite clear in the case of Nyamogo & Nyamogo Advocates v Kogo [2001] 1 EA 173. An error apparent on the face of the record includes an omission which must also be glaring and self evident. It is not one that requires an elaborate argument or serious scrutiny of the record to be established-- National Bank of Kenya Ltd. v Ndungu Njau, civil Appeal No. 211 of 1996 (unreported). As was stated by the Nigerian Court of Appeal in the case of Peter Cheshe & another v Nikon Hotels Ltd. & Another, Appeal No. CA/A/83/M/98 that an error on the face of the record is one that can be corrected under the slip rule whose jurisdiction is limited to correcting errors, mistakes or omissions in the ruling or judgment and does not permit granting orders not made or extending the scope of the ruling.”

2. Pancras T. Swai v Kenya Breweries Limited [2014] eKLR.

The Court of Appeal in this case held that the three limbs of rule 1 in Order 45 relate to issues of fact and not errors of law. That an error of law can only be challenged on appeal. The court affirmed that an erroneous view or conclusion of law or evidence is not a ground for a review but may be a good ground for appeal. The court further held that:

“As repeatedly pointed out in various decisions of this Court, the words, “for any sufficient reason” must be viewed in the context firstly of Section 80 of the *Civil Procedure Act*, Cap 21, which confers an unfettered right to apply for review and secondly on the current jurisprudential thinking that the words need not be analogous with the other grounds specified in the order. In Sarder Mohamed v. Charan Singh Nand Sing and Another (1959) EA 793, the High Court correctly held that Section 80 of the *Civil Procedure Act* conferred an unfettered discretion in the Court to make such order as it thinks fit on review and that the omission of any qualifying words in the Section was deliberate. In Shanzu Investments Limited v. Commissioner for Lands (Civil Appeal No. 100 of 1993) this Court with respect, correctly invoked and applied its earlier decision in Wangechi Kimata & Another v. Charan Singh (C.A. No. 80 of 1985) (unreported) wherein this Court held that ‘any other sufficient reason need not be analogous with the other grounds set out in the rule because such restriction would be a clog on the unfettered right given to the Court by Section 80 of the *Civil Procedure Act*; and that the other grounds set out in the rule did not in themselves form a genus or class of things which the third general head could be said to be analogous.”



3. National Bank Of Kenya Limited v Ndungu Njau [1997] eKLR.

In this case, the Court of Appeal held that a review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the Court. That the error or omission must be self-evident and should not require an elaborate argument to be established. The court further held that it cannot be a ground for review that the Court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.

Analysis

13. I have considered the application and given due regard to the authorities highlighted herein above. Does the plaintiff's application fall under the purview of Order 45 rule 1 of the Civil Procedure Rules? My understanding of the law and the authorities cited herein above is that for failure to consider evidence to qualify as an "error apparent on the face of the record", the following conditions precedent must be satisfied:
- a. The evidence was on record;
 - b. The evidence was material to the outcome;
 - c. The judgment or ruling is completely silent on it; and
 - d. The omission is plain and patent, not debatable.
14. My view is that the application meets the above conditions precedent. Indeed, the record is clear that the plaintiff filed a further list of documents dated 10/2/2025 which contains receipts. The list was admitted in evidence by consent on 5/8/2025. The court inadvertently failed to consider the evidence. That is part of the challenges of e-filing. It is easy for the court to miss out on some of the documents filed on record. The defendant made a prudent decision by not opposing the application. The application must of necessity be allowed ex debito justitiae.

Disposition

15. Having made the above analysis, it is my finding that the application is meritorious. Consequently, I make the following orders:
- a. The application dated 25/11/2025 is hereby allowed;
 - b. The order dismissing the plaintiff's suit with costs is hereby reviewed and in effect, judgment is hereby entered in favour of the plaintiff as against the defendants, jointly and severally, in the sum of Ksh. 1,041,528/=. The amount is subject to deduction of 20% agreed contribution on liability. The award will work out as follows:
 - i. Special damages.....Ksh. 1,041,528/=
 - Less 20% contribution.....Ksh. 208,305.60/=
 - Balance due to the plaintiff.....Ksh. 833,222.40/=
 - ii. The plaintiff is also awarded 80% costs of the suit and interest. Interest on the special damages shall accrue at court rates from the date of filing suit to the date of judgment/decree.
 - c. Costs of the application shall be in the cause.



DATED, SIGNED AND DELIVERED IN OPEN COURT AT MAKINDU THIS 16TH DAY OF
DECEMBER, 2025.

Y.A SHIKANDA

SENIOR PRINCIPAL MAGISTRATE.

