Kenya Accreditation Service Ltd v Njoroge (Civil Appeal E575 of 2024)
[2026] KEHC 68 (KLR) (Civ) (15 January 2026) (Judgment)

Neutral citation: [2026] KEHC 68 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

CIVIL APPEAL E575 OF 2024

FR OLEL, J

JANUARY 15, 2026

BETWEEN

KENYA ACCREDITATION SERVICE LTD ..... APPELLANT

AND

IRUNGU CHARLES NJOROGE ..... RESPONDENT

(Being an Appeal from the Ruling and Order of Honorable C.K Cheptoo (PM) dated on the 29th day of February 2024)

JUDGMENT

Introduction

1. This appeal arises from the ruling/order of Hon C.K. Cheptoo (PM) delivered on 29th February 2024, where she dismissed the appellants review application dated 16th October 2923, seeking to set aside judgment of the trial court dated 11th August 2023 and all other consequential orders of the said court issued pursuant to the said judgment.

2. Being aggrieved by the said ruling, the Appellant filed their Memorandum of Appeal raising seven (7) grounds of Appeal, namely that;

    a. The learned Magistrate erred in law and misdirected herself in the manner that she framed the issues for determination.

    b. The learned Magistrate erred in law and misdirected herself when she failed to appreciate that the Appellant had discovered new material evidence in relation to the alleged accident that necessitated the entire suit.

c. The learned Magistrate erred in law and misdirected herself when she failed to appricate that the new material evidence showed that there was an error, which would have exonerated the Appellant from liability.

d. The learned Magistrate erred in law and Misdirected herself by failing to find that the new evidence produced by the Appellant as well as the misapprehension of facts was enough to review and set aside the judgment, decree and proceedings of the entire suit.

e. The learned Magistrate erred in law and misdirected herself in finding that the alleged consent entered into could not be set aside in light of the new evidence obtained by the Appellant.

f. The learned Magistrate erred in law in dismissing the Appellants application for review in its entirety.

g. The learned Magistrate erred in law in failing to consider the Appellants submissions and materials provided.

3. The Appellant thus prayed that the said ruling be set aside and, in its place, the Appellant be allowed to adduce the new evidence so as to determine the suit justly.

. Background Facts

4. The respondent filed the primary suit seeking damages arising from a road traffic accident, which he alleges occurred along Thika Road on the 22.09.2021 involving his motor cycle registration Number KMFJ 507U and the Appellants motor vehicle registration No KBQ 918D and as a result had sustained bodily injuries. The Appellants through their insurer duly instructed counsel, who entered appearance and filed a statement of defence. On 10.05. 2023, the parties did enter into a consent on liability in the ration of 85;15 in favour of the respondent and both parties admitted their respective documents into evidence without calling the makers.

5. After considering the pleadings and submissions filed the trial magistrate awarded the respondent damages to the tune of Kshs.605,550/= less 15% contributory negligence, which reduced the said amount to Kshs.514,717.50/= plus costs and interest. The Appellant subsequently opted to challenge this judgment by filing their review application dated 16th October 2023, where they pleaded that they had come across new evidence, which was that the suit motor vehicle was not on Thika road on the material day and thus could not have been involved in the said accident. In light of the said evidence it would be just and proper to have the suit reopened and considered to enable the court reach a just decision.

6. In response, the Appellant averred that the said application was wholly misconceived, frivolous and fatally defective as it had been filed in bad faith with the sole aim of delaying and/or derailing the realization of the fruits of the judgment issued. It had not been demonstrated that the new evidence captured was not within the appellants possession/knowledge and it was obvious that they had not exercised due diligence to present the same before the trial court during trial. Secondly it was to be noted that the Appellant had been represented by counsel in the said proceedings, who was full brief of the particular facts concerning the said case and with clear instruction had entered into a consent on liability. Therefore, the Appellant had not demonstrated nor met the threshold for review and they prayed that the said Application be dismissed with costs.

C. Analysis & Determination

7. I have considered this appeal and the impugned Ruling. I have also considered the submissions filed, the decisions relied on, and perused the trial court's record. This being a first appeal, it is by way of a retrial, and this court, as the first appellate court, must re-evaluate, re-analyze, and re-consider the evidence afresh and draw its conclusions on it. The court should, however, bear in mind that it did not see the witnesses as they testified and give due allowance for that. (see Selle v Associated Motor Boat Co Ltd & Others [1968] EA 123) & Peters Vs Sunday Post Limited (1968) EA 123).

8. A first appellate court is also the final court of fact, and litigants are entitled to full, fair, independent consideration of the evidence. The parties have a right to be heard both on issues of fact and issues of law, and the court must address itself to all issues raised and give reasons thereof. While considering the entire scope of section 78 of the *Civil Procedure Act*, a court of first appeal can appreciate the entire evidence and come to a different conclusion. See Kurian Chacko Vs Varkey Ouseph, AIR 1969 Kerala 316.

9. Section 80 of the *Civil Procedure Act* provides as follows: -

   Section 80. Review

   "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."

   Order 45 Rule 1 of the Civil Procedure Rules

   [Order 45, rule 1.] Application for review of decree or order.

   "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"

10. From the above provisions, it is clear that while Section 80 of the *Civil Procedure Act* grants the court the power to make orders for review, while Order 45 sets out the jurisdiction and scope of review by

hinging review to discovery of new and important matters or evidence, mistake or error on the face of the record and any other sufficient reason.

11. The Court of Appeal had the following to say in an application for review in the case of National Bank of Kenya Ltd vs Ndungu Njau(2001) eKLR

> " 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. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it 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."

12. The Court of Appeal's determination in Rose Kaiza v Angelo Mpanjuiza [2009] eKLR quoted with approval the commentary by Mulla of the Indian Civil Procedure Code, 15th Edition at page 2726, on the ground of discovery of new and important evidence which stated that:

> " Applications on this ground must be treated with great caution and as required by r 4(2) (b) the Court must be satisfied that the materials placed before it in accordance with the formalities of the law do prove the existence of the facts alleged. Before a review is allowed on the ground of a discovery of new evidence, it must be established that the applicant had acted with due diligence and that the existence of the evidence was not within his knowledge; where review was sought for on the ground of discovery of new evidence but it was found that the petitioner had not acted with due diligence, it is not open to the Court to admit evidence on the ground of sufficient cause. It is not only the discovery of new and important evidence that entitles a party to apply for a review, but the discovery of any new and important matter which was not within the knowledge of the party when the decree was made."

13. Further reliance is placed on the case of D.J. Lowe & Company Ltd v Banque Indosuez Civil Appl. Nai. 217/98 (ur), which was also quoted with approval by the Court of Appeal in the Rose Kaiza Case above (supra) where it was stated that : -

> " Where such a review application is based on fact of the discovery of fresh evidence the court must exercise greatest of care as it is easy for a party who has lost, to see the weak part of his case and the temptation to lay and procure evidence which will strengthen that weak part and put a different complexion. In such event, to succeed, the party must show that there was no remissness on his part in adducing all possible evidence at the hearing."

14. The appellant was fully represented by counsel, who filed their statement of defence on 30.05.2022 and one year later on 10.05.2023 entered into a consent on liability. The appellant has not sufficiently explained why the failed to supply the new evidence to their advocate on time, yet the same were within their sole possession and knowledge. It is also expected that under Order 7 rule 5 of the Civil Procedure Rules, they would have availed these documents to their counsel to be filed concurrently with their statement of defence but failed to do so. Further between filing of the statement of defence and the said consent another one whole year passed, without this information being passed.

15. The excuse tendered that the suit had not been brought to their attention by the previous counsel also holds no water, as the applicant admitted in the supporting affidavit that their insurer was aware of this

case and contracted the said advocate to handle the matter for them. This logically would only arise after they have been served with summons and they forwarded to their insurer to protect their interest. It is thus obvious, that the Appellant had not acted with due diligence, and seeks to have a second bite on the cherry through the back door.

C. Disposition

16. This Appeal therefore has lacks merit and the same is dismissed with Costs to the respondent. The same are assessed at Kshs.150,000/= all inclusive.

17. It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT MARSABIT THIS 15TH DAY OF JANUARY, 2026.

FRANCIS RAYOLA OLEL

JUDGE

Delivered on the virtual platform, Team this 15th day of JANUARY ,2026.

In the presence of: -

.....Appellant

..... Respondent

.....Court Assistant