



Commissioner of Investigations and Enforcement v Doshi Enterprises Limited (Income Tax Appeal E112 of 2024) [2026] KEHC 2839 (KLR) (Commercial and Tax) (26 February 2026) (Ruling)

Neutral citation: [2026] KEHC 2839 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E112 OF 2024
F GIKONYO, J
FEBRUARY 26, 2026**

**BETWEEN
COMMISSIONER OF INVESTIGATIONS AND ENFORCEMENT APPELLANT
AND
DOSHI ENTERPRISES LIMITED RESPONDENT**

RULING

1. The respondent's notice of motion dated 16.5.2025 is seeking review of the judgment dated 8.4.2025 on the ground of error apparent on the face of the record.
2. The application is made under section 80 of the *Civil Procedure Act* and order 45 of the Civil Procedure Rules. It is supported by an affidavit sworn by Thiong'o Ng'wiri on 16.5.2025.
3. The respondent opposed the application through a replying affidavit sworn by Shiela Odawa on 9.6.2025.

Background

4. Through the judgment, the court allowed the appeal in part and directed that the matter be referred to the Tax Appeal's Tribunal (Tribunal) for reconsideration because it did not consider all the relevant documents produced.
5. The court also directed the appellant to make and supply the respondent with a fresh objection decision within 60 days from the date of the judgment.



Applicant's case

6. The respondent submitted that the court erred by finding that the documents were first produced before the Tribunal. It highlighted that the subject documents were first produced during the objection stage in its notice of objection dated 26.7.2022, according to the statement of facts filed on 19.6.2024. The appellant thereafter issued its objection decision dated 23.9.2022.
7. The respondent also highlighted that in its objection decision, the appellant did not find the notice of objection to be invalid. The appellant deemed the notice of objection valid as it met all the conditions under section 51 (3) of the *Tax Procedures Act* and contained all the relevant documents relating to the objection.
8. The respondent expressed the apprehension that the appellant would issue a second objection decision which it would have to appeal against. It argued that the issuance of another objection in the circumstances would be contrary to the principle of res judicata as it will lead to re-litigation.
9. The respondent asserted that there is an error on the face of the record warranting a review of the judgment. It relied on Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] eKLR to submit that an error apparent on the face of the record is one which is obvious and speaks for itself.

Response

10. The appellant stated that in the objection decision, it was noted that several documents were not provided during the objection review stage. It faulted the respondent for failing to appreciate this. It argued that an invitation to review more than 150 pages cannot constitute an error apparent on the face of the record.
11. The appellant challenged the respondent's assertion that there is no new information for consideration, arguing that it is a question of fact that the court must interrogate to establish whether its new or not therefore not an apparent error.
12. The appellant contended that inviting the court to confirm the status of whether the documents were provided during the objection application which position was contested cannot qualify as error apparent or any reasonable cause to warrant a review. That this amounts to inviting the court to re-open its judgement by reviewing the evidence on record with a view of arriving at a different determination.
13. The appellant also contended that an erroneous view of evidence or law as alleged by the respondent is not ground for review though may be a good ground for appeal. According to it, a review lies only for patent error where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.
14. The appellant indicated that since there was no stay of the judgment it issued another objection decision. It argued that the doctrine of res judicata is not applicable because the court's directive gave it a chance to review the documents that had not been previously reviewed and that the grounds of appeal would be different from the previous appeal.
15. The appellant contended that having issued another objection decision, the instant application is overtaken and a waste of the court's time. It added that the only recourse left to the respondent is to appeal the fresh objection decision. It contended that the application has been brought in bad faith.



Analysis and Determination

16. The court has discretion to grant a review of its judgment, order or decree. Section 80 of the *Civil Procedure Act*. The discretion ought to be exercised reasonably based on principles and not capriciously. The grounds for review are set out under Order 45 of the Civil Procedure Rules, namely, discovery of new and important matter or evidence or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason.
17. The application is seeking a review based on an error on the face of the record.
18. The gravamen is that the court erred by finding that the documents were first produced before the Tribunal.
19. The appellant was of a different view; that the court's finding was accurate since the respondent had only provided Barclays Bank Statement and the reason the same was rejected was the because the statements from NIC had not been provided to demonstrate contra entries.
20. At page 7 of the judgment, the court stated that: -

“The tribunal also noted that the appellant produced before it evidence to demonstrate the loan by NIC to Doshi Hardware including bank advice showing the loan amount leaving Doshi Hardware's account and reaching the respondent's Barclays bank account. It is no doubt these documents influenced the decision of the tribunal as the tribunal went on to state that;

‘In the Tribunal's view, provision of these documents was sufficient proof to support the appellant's contention that the bank credit of Kshs. 65,887,500.00/- in year 2016 was a debt repayment by its related entry (sic) Doshi Hardware’

The same goes for documents in explanation of some Kshs. 7,962,750 and Kshs. 46,000,000.00 said to have been proof of intra-accounts transfers, invoices and corresponding bank statements showing cash flows. These are documents which are said not to have been produced by the respondent during the objection stage. This court holds the view that in view of the legal position that the taxpayer has the burden of proving that the assessment is wrong, it is the duty of the taxpayer to provide the Commissioner all the relevant documents in respect of the transactions in question. This should be done at objection stage in the first instance. Producing the documents during the hearing before the tribunal attest to the fact that the respondent considered them to be relevant to the objection but doing so in my view amounted to transferring the mandate of assessment of tax which belongs to the Commissioner to the tribunal.”

this Tribunal evidence to demonstrate the loan by NIC Bank to Doshi Hardware, including bank advice showing the loan amount leaving Doshi Hardware's accounts and reaching the Appellant's Barclays Bank account.’

21. The above informed the court's disposition of the matter, to the effect that: -
 - “b. Part of the judgment of the tax appeals tribunal dated 22-03-2024 in its appeal number 1316 of 2022 setting aside the appellant's objection decision dated 23rd September 2012 is upheld to the extent that the matter shall be



referred back to the Commissioner taking into account all relevant documents produced before the tribunal.”

22. I have set out the relevant excerpts of the judgment in extenso not for purposes of analysis or evaluation, but as a foundation for the finding I will make below.
23. The appellant and the respondent have taken divergent views on whether the court was correct to find that the subject documents were first produced before the tribunal. In my considered view, the divergent viewpoints call for probing of evidence- a judicial action that is beyond review procedure but belonging to the appellate forum.
24. Put differently, the alleged error is ‘to be established by a 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.” Nyamogo & Nyamogo Advocates v Kogo [2001] EA 173
25. The alleged error is not, therefore, an apparent error in the sense of order 45 of the CPR.
26. Accordingly, the respondent has failed to show that there is an error on the face of the record to warrant a review.

Disposal

27. The respondent’s application dated 16.5.2025 is dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 26TH DAY OF FEBRUARY, 2026

F. GIKONYO M
JUDGE

In the presence of: -

Ruto for Respondent

Ms. Obiero for Appellant

CA – Ivan/Aggrey

