



**Mycredit Limited v Njue (Commercial Appeal E040 of 2023)
[2026] KEHC 1065 (KLR) (Commercial and Tax) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 1065 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL APPEAL E040 OF 2023
MA OTIENO, J
JANUARY 29, 2026**

BETWEEN

MYCREDIT LIMITED APPELLANT

AND

HARRISON MUNYI NJUE RESPONDENT

RULING

Introduction & Background

1. Before me is the Respondent/Applicant's Notice of Motion dated 22 January 2025 brought under Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the *Civil Procedure Rules, 2010*, seeking review of this Court's judgment delivered on 17 December 2024.
2. The Applicant moves the Court to correct what is termed an error apparent on the face of the record regarding the award of costs.
3. The Applicant contends that whereas the Court orally pronounced, in open court, that the appeal was dismissed with costs to the Respondent, the typed judgment uploaded to the CTS platform erroneously stated that each party was to bear its own costs on the basis that the Respondent had not participated in the appeal. It is asserted that this finding is factually incorrect and constitutes an error apparent on the face of the record.
4. The Applicant therefore seeks correction of that discrepancy and an award of costs of the appeal and of this application.
5. The Appellant/Respondent opposed the application through Grounds of Objection dated 13th March 2025, arguing that the application does not meet the threshold for review and improperly invites the Court to sit on appeal against its own decision.



6. The application proceeded by way of written submissions. The Applicant's submissions are dated 4 August 2025. No submissions were filed on behalf of the Respondent.
7. The Applicant contends, in summary, that he participated in the appeal by filing a Replying Affidavit (24 March 2023), written submissions (25 July 2024), attending all mentions/hearings, and being represented by counsel at the delivery of judgment. He further points out that the written judgment itself considered some of his arguments, hence the statement in the uploaded version that he "did not participate" is factually incorrect.
8. Consequently, the Applicant urged the Court to align the written judgment with its oral pronouncement

Analysis and Determination

9. From the pleadings and rival positions, the sole issue that arises for determination is whether the Applicant has made a case for review of this Court's judgment of 17 December 2024.
10. The power of review is anchored in Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the *Civil Procedure Rules*, which allow for review upon the discovery of new evidence, a mistake or error apparent on the face of the record, or for any other sufficient reason.
11. An error apparent on the face of the record is one that is self-evident and does not require a long-drawn process of reasoning to establish.
12. In this case, the Applicant has demonstrated active participation in the appeal through the filing of pleadings and submissions. The written judgment itself refers to the Respondent's submissions, contradicting the finding of non-participation.
13. It is settled law that where a written judgment contradicts the oral pronouncement made in open court, such a discrepancy constitutes a factual error rather than a matter of judicial discretion. As held in *Vijay Kumar Davalji Kanji Gohil v Suresh Mohanlal Fatania & 8 others* [2013] eKLR, a court's failure to deal accurately with the issue of costs due to inadvertence amounts to an error apparent on the face of the record.
14. Regarding the entitlement to costs, Section 27 of the *Civil Procedure Act* stipulates that costs follow the event unless the court has good reason to order otherwise. Depriving a successful party of costs without justification is considered a misdirection.
15. Based on the foregoing, the Court finds that the Respondent/Applicant has successfully demonstrated that the written record does not accurately reflect their participation or the Court's oral pronouncement regarding costs.
16. Accordingly, the Notice of Motion dated 22 January 2025 is hereby granted as follows: -
 - i. The judgment dated 17th December 2024 is reviewed to reflect the Respondent's active participation in the appeal.
 - ii. The order that each party bears its own costs is set aside and substituted with an order awarding the costs of the appeal to the Respondent/Applicant.
 - iii. The costs of this application are awarded to the Respondent/Applicant.
17. It is so ordered.

SIGNED, DATED, AND DELIVERED IN VIRTUAL COURT THIS 29TH JANUARY, 2026.



ADO MOSES

JUDGE

In the presence of: -

C/A – Moses

Musili.....for the Applicant

Ms. Ondieki for Abidha.....for the Respondent

