

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**APPEAL NUMBER E252/2025**

**ANTHONY KIMUNGE..... APPLICANT/APPELLANT**

**VS**

**G4S KENYA LTD.....RESPONDENT**

**RULING**

This is an application for review dated 14th January, 2026 seeking a stay of execution of the judgements of 10th December, 2025 insofar as it awards costs to the Appellant. The application further prays that paragraph 38 of the judgement be corrected to read ‘**The Respondent be granted costs of the Appeal**’

The decision of court as pronounced at paragraphs 36 and 37 comes out thus.

*36. The trial court dismissed the suit. I find the award of notice pay was contrary to the holding that the suit was dismissed. The error was apparent on the face of the record. Costs follow the event and the event was that the suit was dismissed. Costs could only have been awarded to the respondent. The court holds that the trial court erred in awarding the notice pay and half costs to the Appellant subsequent to its dismissal of the suit.*

*37. The appeal is held to be without merit and is dismissed. Further, the court held that the award of notice pay and half costs was erroneous, the trial court having dismissed the suit. Consequently, the Judgment and Decree of the Hon. A. Nyoike (SPM) delivered on 21st July 2025 in Nairobi MCELRC E2176 of 2023 is set aside and substituted with a judgment that the suit is dismissed with costs to the respondent.*

This pronouncement as read in court awarded the costs of the appeal to the Respondent.

It is the Respondent's case and submissions that there is a mistake apparent on the face of the record in that the court awarded costs to the Respondent while paragraph 38 indicates that the costs were awarded to the Appellant. The reference to the Appellant at this paragraph is a mistake arising out of a typo.

The Respondent's other case in support of the application is that the Appellant has extracted a decree based on this judgement and has threatened to execute to recover these costs. They therefore pray that this application be allowed with costs.

This application is not opposed, or at all. This is despite service.

The Respondent in support of the application frames written submissions dated 14th January, 2026 in which they seek to rely on the authority of Rule 74(1) of the Employment and Labour Relations Court (Procedure), Rules, 2024 which provides as follows:

*"A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within*

*reasonable time, apply for a review of the judgment or ruling...on account of some mistake or error apparent on the face of the record; if the judgment or ruling requires clarification; or for any other sufficient reason."*

They further seek to rely on the authorities of **Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] eKLR** where the court in defining a mistake or error apparent on the face of the record affirmed the definition outlined in **Attorney General & O'rs v Boniface Byanyima HCMA No.1789 of 2000** where it was observed that:

*"...the expression "mistake or error apparent on the face of record" refers to an evident error which does not require extraneous matter to show its incorrectness. It is an error so manifest and clear that no court would permit such an error to remain on the record. It may be an error of law, but law must be definite and capable of ascertainment."*

It is also the Applicant's submission that the court has unfettered discretion in reviewing its awards to ensure that the ends of justice are met as was illustrated in the authority of **Peter Maina Munina v Anne Wanjiru Wachira (suing as Attorney of Samuel Nduati Njuguna) [2021] eKLR**.

It is the Respondent's penultimate submissions that based on paragraphs 36 and 37 of the judgement of court and bearing in mind that the court pronounced an award of costs to the Respondent in the presence of both their counsels for the parties, it is incumbent upon this court to review the error and award costs to the Respondent as appropriate.

I agree. This is a walkover application, it is no wonder that the Appellants have seen no reason to oppose or in any way contest the same.

I am therefore inclined to allow the application with orders that each party bears their cost of the same.

Delivered, dated and signed this                      **18<sup>th</sup>**    day of    **March**  
2026.

**D. K. Njagi Marete**  
**JUDGE**

Appearances;

1. Mr. Masabera holding brief for Mwendwa for the Respondent/Applicant
2. No appearance for the Appellant/Respondent.