

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL NO. E104 OF 2021

BLACK STALLION LIMITED
APPELLANT

VERSUS

DANIEL KIPKEMBOI KOECH
RESPONDENT

Coram: Before Justice R. Nyakundi
M/s Ndumu Kimani & Co. Advocates
M/s Kigen & Co. Advocates.

RULING

- 1.** Before me for determination is the Appellant’s Notice of motion dated 20th January, 2026 expressed under the provisions of Order 45 Rule 1, 2, and 3 Civil Procedure Rules in which he sought reliefs as hereunder:
 - a. The judgment delivered on 7th January, 2026 be reviewed by making a determination on the second ground of appeal.*
 - b. The direction on interest be reviewed and the same be substituted that with an order that the decretal amount does not accrue any interest as the decretal amount was deposited into court on 17th February, 2023.*
 - c. Costs be in the appeal.*
- 2.** The application is anchored on grounds that the court did not make a determination on the second ground of appeal and that the omission in making a determination on 2nd ground of appeal is an error apparent on the face of the record.

- 3.** In response to the application, the Respondent swore a replying affidavit stating as follows:
- a. That the application herein is bad in law, incompetent, misadvised, baseless, frivolous, scandalous, an afterthought and an outright abuse of the due process of the court as it does not meet the threshold for review as set out in statuses.
 - b. That the appellant is only trying to have a second bite of the cherry as there is nothing new that has been raised to warrant this court reviewing its judgment of 7th January, 2026.
 - c. That the Appellant's instant application does not meet the threshold set out in law under the Civil Procedure Act and the rules therefrom.
 - d. That having read the judgment of the court delivered on the 7th January, 2026, it is my view that the issue of the 2nd ground of appeal was conclusively addressed by this honorable court in the aforementioned judgment wherein at page 13 of the judgment, this court stated that, "..... That issue though re-visited by the 1st defendant/appellant to this appeal, there are no grounds for this court to interfere with the decision of the learned trial magistrate."
 - e. That it is therefore evident that there was no error or omission apparent on the face of the record as the honorable court addressed each and every issue before it.
 - f. That in regards to the issue of interests, as was properly determined by this honorable court, I am entitled to interests on the general damages from the date of the lower court judgment until payment in full.
 - g. That the Appellant having only deposited the decretal sum in court about 2 years after the lower court judgment, they cannot allege that I am not entitled to interests on the decretal sum. The amount should attract interests from the date of the lower court judgment until the date when the amount was deposited.

- h. That therefore, there is no any reason as to why this court should be invited to interfere and/or review its decision on the order of interests.
- i. That the application does not raise and/or point out any error or omission apparent on the face of the record neither does it present any new and compelling evidence that would want this court exercising its discretion of review.
- j. That no sufficient grounds have been advanced and/or set forth to warrant the granting of the prayers sought.
- k. That this court having already rendered itself on the issues being raised is functus officio and cannot be called upon to rehear and determine the issues afresh.

Analysis and determination

4. The instant application was expressed under the provisions of **Order 45 of the Civil Procedure Rules 2010** which provides as follows:-

“(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.

5. In the case of **Francis Njoroge V Stephen Maina Kamore (2018) eKLR**, the court held that:

“Therefore, Order 45 of the Civil Procedure Rules, 2010 is very explicit that a court can only review its orders if the following

grounds exists: -(a)There must be discovery of a new and important matter which after the exercise of due diligence, was not within the knowledge of the applicant at the time the decree was passed or the order was made; or(b)There was a mistake or error apparent on the face of the record; or(c)There were other sufficient reasons; and(d)The application must have been made without undue delay”.

6. In **National Bank of Kenya Limited v Ndungu Njau [1997] eKLR**, the Court of Appeal elaborated the “error apparent” threshold:

“An error apparent on the face of the record must be such as can be seen by one who runs and reads, that is, it must be an obvious and patent mistake and not something which can be established by a long-drawn process of reasoning.”

- 7.** Having considered the submissions as filed by both parties and carefully examined the record of this court, I now turn to determine the two distinct limbs upon which the Appellant's Notice of Motion dated 20th January 2026 is founded.
- 8.** The Appellant's primary contention is that this court delivered judgment on 7th January 2026 without making a specific and express determination on the second ground of appeal, which challenged the finding of the learned trial magistrate holding the two defendants jointly and severally liable at 100% rather than apportioning liability between them. It is submitted on behalf of the Appellant that this omission constitutes an error apparent on the face of the record warranting the intervention of this court by way of review.
- 9.** I have considered this submission carefully and I am not persuaded by it. A fair reading of the judgment of this court delivered on 7th January 2026 demonstrates that the issue of liability was squarely addressed. At paragraph 22 of that judgment, this court stated in no uncertain terms that the bone of contention in the appeal was on both liability and assessment of damages. Proceeding from that premise, the court embarked on a comprehensive analysis of the negligence principles applicable to the facts as presented before the trial court, setting out the

applicable legal standards at paragraphs 25 and 26 of the judgment. At paragraph 27, the court reproduced and examined the findings of the learned trial magistrate on the ownership of the subject motor vehicle and the basis upon which both defendants were held jointly and severally liable. The court then concluded at paragraph 28 that having reviewed the evidence on the question of liability as presented before the trial court, there was no evidence of misdirection or misapprehension of the evidence and that the decision reached as to ownership and liability gave no grounds for interference.

- 10.** It is evident therefore that what this court did was to treat the first and second grounds of appeal as a composite question of liability, which was entirely within its discretion as the first appellate court. The two grounds were in substance interconnected, the first questioning ownership and the second questioning the apportionment that flowed from the finding on ownership and negligence. Addressing them together under the singular enquiry of liability cannot by any stretch of reasoning amount to an error apparent on the face of the record. The threshold set in *National Bank of Kenya Limited v Ndungu Njau* (supra) requires an error that is obvious and patent, not one that can only be established through elaborate argument. The Appellant's contention on this limb amounts to nothing more than a dissatisfaction with the manner in which the court structured its analysis, and that dissatisfaction does not translate into a reviewable error. A court of review is not a court of appeal, and it would be impermissible to use the review jurisdiction as a vehicle for re-arguing grounds that were already before the court and addressed, even if not in the manner the aggrieved party would have preferred. The first prayer in the Notice of Motion therefore fails and is dismissed accordingly.
- 11.** On the question of interest, the Appellant urges that the decretal amount was deposited into the Eldoret Deposit Court Account on 17th February 2023 following an order for stay of execution, and that in those circumstances the decretal sum ought not to continue attracting interest beyond that date since the money was made available to the Respondent from that point.

- 12.** The power of this court to award interest flows from Section 26 of the Civil Procedure Act, which provides that where and in so far as a decree is for the payment of money, the court may in the decree order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit. It is therefore settled that the award of interest is a matter within the court's discretion and that the direction issued in the judgment of 7th January 2026 that the revised award of Kshs. 870,000 would attract interest from the date of the lower court judgment until payment in full was a proper exercise of that discretion.
- 13.** That said, on the specific question of whether interest should continue to run after the deposit of the decretal sum into court, the position in law is that the purpose of ordering a deposit as a condition of stay of execution is precisely to protect the decree holder from the risk of a pyrrhic victory at the end of protracted proceedings. Where the deposit has been made and the funds held in court are available to the decree holder, it would work an injustice to allow interest to continue running on an amount that is in practical terms no longer being withheld. This court is guided by the decision in **National Media Group Ltd v Muya (Civil Appeal E132 of 2021) [2025] KEHC 170 (KLR)**, in which it was held that the Respondent was entitled to interest on the decretal sum with the effective dates being from the date of delivery of the judgment to the date the Applicant deposited the decretal sum in court. The principle to be extracted from that decision is that once the decretal sum is deposited into court, interest ceases to run on the sum so deposited since the decree holder's entitlement to payment has been satisfied to that extent.
- 14.** Applying those principles to the facts of this matter, it is not in dispute that the trial court's judgment was delivered on 20th August 2021 and

that the Appellant deposited the decretal sum into court on 17th February 2023. It follows that the Respondent is entitled to interest on the revised decretal sum of Kshs. 870,000 from 20th August 2021 to 17th February 2023, being the date on which the deposit was made, and interest shall cease to run on the deposited sum from that date. To the extent that the deposit made into court exceeded the revised decretal amount as determined by this court on 7th January 2026, the excess amount shall be refunded to the Appellant upon extraction of the decree.

15. On the question of costs of the lower court which were never deposited, interest on those costs shall continue to run from the date of the lower court judgment until payment in full, pursuant to Section 27(2) of the Civil Procedure Act.

16. In the premises, the following orders shall abide:

a. The first prayer seeking a review of the judgment on the basis of an alleged omission to determine the second ground of appeal is dismissed.

b. The second prayer on interest is allowed to the limited extent of clarifying that interest on the revised decretal sum of Kshs. 870,000 runs from 20th August 2021 to 17th February 2023 and not beyond.

c. Each party shall bear its costs.

17. Orders accordingly.

**DATED SIGNED AND DELIVERED VIA CTS AND EMAIL ELDORET THIS
10TH DAY OF APRIL, 2026**

.....
R. NYAKUNDI

JUDGE