

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

CIVIL APPEAL NO. E026 OF 2025

JANE NDUTA GACHANJA

**(Suing as the personal representative of the Estate of
GEORGE GACHANJA - Deceased)..... APPELLANT**

VERSUS

HON. ATTORNEY GENERAL

RESPONDENT

***(Being an appeal from the ruling delivered by in Hon.
Naivasha Magistrate's Court in MCCC No. 286 of 2015***

JUDGMENT

Background

1. Judgment was delivered in the lower court on 30th November 2023, wherein the trial court apportioned liability among the defendants in a running down claim.
2. Following the issuance of a Certificate of Order against the Government dated 25th July 2024, the Appellant filed an application dated 5th December 2024 seeking review of the judgment arguing that there was an error apparent on the face of the judgment, relating to the apportionment of liability.
3. The Appellant's position was that although the amended plaintiff had three defendants, the 2nd defendant was sued

as an agent/driver of the 3rd defendant, and therefore the 3rd defendant was vicariously liable for the acts/omissions of the 2nd defendant.

4. The Appellant also stated that the 3rd defendant had settled half the decretal amount, and that it was therefore unjust to distribute execution exposure among three defendants.
5. The application for review was unopposed but in the impugned ruling delivered on 4th March 2025, the trial court dismissed it, holding that the orders sought went to the core of the judgment, that it could not re-apportion liability through review, and that the court was functus officio.

The Appeal

6. Dissatisfied with the dismissal of the review application, the Appellant lodged this appeal in which she contended that the trial court erred in holding that it was functus officio and in finding that the Appellant sought to vary apportionment instead of correcting an error. The Appellant faulted the trial court for failing to appreciate that the application was to correct an error apparent on the face of the record.

Duty of the Court

7. This being a first appeal, this court is required to re-evaluate the record, and arrive at its own independent conclusion, while bearing in mind that it did not see or

hear the parties. (See ***John Patrick Machira T/A Machira & Co. Advocates vs. East African Standard [2001] eKLR***).

Issues for Determination

8. Having considered the record and the parties' submissions, I find that the main issues for determination are whether the trial court was *functus officio* and whether the application met the threshold for an order for review.

Analysis and Determination

Functus Officio

9. *Functus officio* is a Latin phrase/doctrine which means "having performed one's office". The doctrine posits that once a decision-maker has finally exercised its decision-making power, it has no further authority over that matter. In practical terms, a court, tribunal, or arbitrator that has issued a final decision is generally "finished" with the case and cannot reopen, reconsider, or change its decision simply because it now thinks it was wrong.

10. The doctrine serves finality, certainty, and institutional integrity by ensuring that disputes end and parties can rely on outcomes without the decision-maker repeatedly revisiting them.

11. The doctrine does not however bar a court from correcting clerical/arithmetic mistakes, accidental slips, or

omissions, and entertaining applications allowed by law such as review, provided the legal threshold is met.

12. In ***Raila Odinga & 5 others vs. Independent Electoral and Boundaries Commission & 3 others*** [2013] eKLR, the Supreme Court discussed *functus officio* in the context of whether the Court could revisit or reopen its decision after delivering final judgment and emphasized that once it has rendered a final decision, it becomes *functus officio*, except in limited situations like correction of minor errors.
13. In ***Telkom Kenya Limited vs. John Ochanda (Suing on his own behalf and on behalf of 996 former employees of Telkom Kenya Limited)*** [2015] eKLR, the Supreme Court considered the doctrine when dealing with questions around whether earlier decisions could be revisited and reaffirmed that once a court has finally decided an issue, it has no authority to re-open it except as allowed by law such as in the exercise of review powers where applicable.
14. In the present case, the lower court's finding that it was *functus officio* was made in the context that what was being asked was not a correction, but a change of the court's finding on liability.
15. This court agrees that *functus officio* does not completely lock out review jurisdiction. The question which therefore arises is whether the Appellant's application was truly a review within the scope of Order 45 of the Civil Procedure Rules (CPR).

Threshold for Review

16. Order 45 Rule 1 of the Civil Procedure Rules stipulates 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.

17. The above provision allows review where a party demonstrates discovery of new and important matter or evidence; or error apparent on the face of the record; or any other sufficient reason.

18. Review is not meant to act as an appeal in disguise. It cannot be used to re-argue the case or invite the court to re-weigh evidence and substitute a new conclusion. (See ***Francis Origo & Another vs. Jacob Kumali Mungala [2005] eKLR***).

19. My understanding of the the Appellant's key prayer before the trial court was to have the court partially

review its judgment so that liability would not remain apportioned among the three defendants, but rather be shifted to reflect the argument on vicarious liability.

20. Upon consideration, this court finds that the prayers that the Appellant sought required the lower court to not only revisit its findings and conclusions on liability but also to re-structure the final orders on apportionment. To my mind, the nature of the orders sought do not indicate that there was a simple “error apparent” that is self-evident on the face of the record as it would require a re-analysis and re-determination of the case.
21. I am persuaded that the Appellant’s grievance was quite substantive and properly fell under a matter for appeal against the judgment on liability, not review.
22. I note that the trial court addressed the scope of its correction powers under Section 99 of the Civil Procedure Act on clerical/arithmetical mistakes, accidental slips, and review under Order 45 CPR.
23. The trial court reasoned that the request to change apportionment into a different structure (50%/50% or otherwise) was not clerical or arithmetical.
24. This court agrees that apportionment of liability is not a clerical entry but is a substantive determination flowing from the judgment.
25. I therefore find that the trial court correctly found that the application sought more than correction, and that granting it would amount to the court “sitting on appeal of its own decision.”

26. It follows that the learned trial magistrate properly dismissed the review application.

Disposition

27. Having regard to the findings and observations that I have made in this judgment, I find that the instant appeal lacks merit and I therefore dismiss it with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIVASHA THIS 9TH DAY OF APRIL, 2026.

HON. W. A. OKWANY

JUDGE

9/04/2026

FOR APPELLANT Gichuki

FOR RESPONDENT No appearance

COURT ASSISTANT Karani

File closed