



Nyambura t/a Total Vigilant Security Services v Soko Safi Limited (Civil Appeal E1397 of 2024) [2026] KEHC 4882 (KLR) (Civ) (16 April 2026) (Judgment)

Neutral citation: [2026] KEHC 4882 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E1397 OF 2024

WA OKWANY, J

APRIL 16, 2026

BETWEEN

CHARLES WACHIRA NYAMBURA T/A TOTAL VIGILANT SECURITY SERVICES APPELLANT

AND

SOKO SAFI LIMITED RESPONDENT

(Being an appeal from the judgment of Hon. V.K. Momanyi (Adjudicator) delivered on 6th September 2024 in Milimani SCOMM E7639)

JUDGMENT

1. The Claimant (now Appellant) instituted a claim seeking Kshs. 107,000, costs, and interest arising from a contract for provision of security services. The parties had entered into a written agreement dated 5th July 2021 for provision of security services at the Respondent's premises.
2. The trial court found that the contractual relationship between the parties was not disputed and that the agreement covered two sites only (Kawangware and Dennis Pritt). The said court also found that the Claimant provided services beyond the contractual period, totalling thirteen (13) months and twenty-six (26) days, for which the court computed the total payable sum at Kshs. 721,067. The trial court also established that the Respondent had made payments amounting to Kshs. 677,610.
3. The court therefore held that the Claimant was entitled only to the difference of Kshs. 43,457, which it awarded together with costs of Kshs. 5,000 and interest.
4. The court declined to consider any claim beyond the pleaded sum of Kshs. 107,000 and rejected attempts to vary the claim through submissions, holding that parties are bound by their pleadings.



5. Aggrieved by the decision, the Appellant applied for review on grounds that the trial court failed to consider all contractual sites, particularly Ngong Road, that there existed an arithmetic error in computation and that material documents were not considered.
6. The application for review was dismissed, leading to the present appeal which raises the following issues: -
 - a. Whether the judgment of the trial court contained an error apparent on the face of the record warranting review.
 - b. Whether the trial court properly exercised its discretion in awarding costs.

Analysis and Determination

7. The jurisdiction of the Court to entertain such an application is anchored in Section 80 of the [Civil Procedure Act](#) (Cap 21) and Order 45 Rule 1 of the Civil Procedure Rules, 2010.
8. Section 80 of the [Civil Procedure Act](#) provides that:

“Any person who considers himself aggrieved— (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”
9. Order 45 Rule 1 of the Civil Procedure Rules stipulates that:

“(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.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.”
10. From the foregoing provisions, it is clear that the power of review is a statutory jurisdiction and can only be exercised within the confines of the grounds expressly provided.
11. In *David & 2 Others vs. Bakaya* (Civil Appeal E200 of 2022) [2025] KEHC 12790, the Court held:

“A court can review its decision on either of the grounds enumerated in Order 45 Rule 1 and not otherwise.”



12. Where review is sought on the basis of an error apparent on the face of the record, such error must be self-evident and not one that requires elaborate argument. (See *National Bank of Kenya Ltd v Ndungu Njau*, Civil Appeal No. 2111 of 1996).
13. In the cited *National Bank* case (*supra*) the Court further emphasized that review cannot be used as a substitute for appeal and further, that it will not be sufficient that another Judge could have taken a different view.
14. On an application for review based on the ground of discovery of new and important evidence, the applicant must demonstrate that such evidence was not within his knowledge and could not be produced at the time despite the exercise of due diligence. This requirement flows directly from Order 45 Rule 1 which provides for “new and important matter which after the exercise of due diligence was not within his knowledge...”
15. On the phrase “any other sufficient reason” courts have held that the phrase must be interpreted *eiusdem generis* with the other grounds set out in the rule. In *David & 2 Others vs. Bakaya* (*supra*), the Court held that the said expression has to be interpreted in the light of other specified grounds.
16. Review must also be confined to the material that was available at the time the decision sought to be reviewed was made. This means that review cannot be grounded on subsequent developments or later judicial pronouncements.
17. The error sought to be reviewed must also be one that does not require a long-drawn process of reasoning or argument. This is the position that was taken in *Republic vs. Advocates Disciplinary Tribunal Ex parte Apollo Mboya* [2019] eKLR.
18. Applying the above principles to the present case, I note that even though the trial court acknowledged the existence of a contractual relationship and supporting documentation, it confined the contract to two sites and omitted consideration of another site allegedly forming part of the agreement.
19. The Appellant further alleged an arithmetic inconsistency in the computation of the decretal sum.
20. My finding is that while the trial court was correct that parties are bound by their pleadings, the issue of arithmetical error and omission of material already on record falls within the scope of review.
21. I find that to the extent that the computation or omission is discernible from the judgment itself without elaborate argument, the same constitutes an error apparent on the face of the record.
22. I therefore find that the adjudicator erred in declining review.
23. Turning to the issue of whether the award of costs was proper, the law on interference with costs is settled. In *Supermarine Handling Services Ltd v Kenya Revenue Authority* [2010] eKLR, the Court held that where a trial court has exercised its discretion on costs, an appellate court should not interfere unless the discretion has been exercised on wrong principles.
24. In this case the trial court awarded Kshs. 5,000 as costs which the Appellant challenges on the basis that the trial court failed to consider the extent of the legal work done.
25. Given that the court limited costs to filing and service-related considerations under the Small Claims framework without fully addressing broader cost principles, I find that there is evidence of misdirection in principle, warranting interference.
26. In light of the foregoing, I find that there was an identifiable error apparent on the face of the record, and that the court trial court misdirected itself on costs.



27. In sum, I find that the instant appeal is merited and I therefore allow it in the following terms: -
- a. The ruling delivered on 18th November 2024 dismissing the application for review is set aside.
 - b. The application for review dated 20th September 2024 is allowed.
 - c. The judgment of the Small Claims Court dated 6th September 2024 is reviewed and this matter shall be placed before the Adjudicator, other than Hon. V.K. Momanyi to:
 - i. correct any arithmetical errors, and
 - ii. ensure full consideration of all material evidence on record.
 - d. The award of costs in the lower court is set aside and costs shall be reassessed in accordance with the law.
 - e. The Respondent shall bear the costs of this appeal.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF APRIL, 2026.

HON. W. A. OKWANY

JUDGE

16/04/2026

FOR APPELLANT Gathuthi

FOR THE RESPONDENT Gichuki

COURT ASSISTANT Abdirizak

File closed

Lower Court file be sent back to the Lower court

