Equity Bank (K) Limited v Munyeti & 2 others (Civil Appeal E246 of 2023) [2026] KEHC 5937 (KLR) (30 April 2026) (Ruling)

Neutral citation: [2026] KEHC 5937 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MACHAKOS

CIVIL APPEAL E246 OF 2023

EN MAINA, J

APRIL 30, 2026

BETWEEN

EQUITY BANK (K) LIMITED ..... APPELLANT

AND

MARY NDINDA MUNYETI ..... 1ST RESPONDENT

STUNNER TRAVEL LIMITED ..... 2ND RESPONDENT

BENJAMIN NGUI ..... 3RD RESPONDENT

RULING

1. This is a ruling on the Appellant/Applicant's application dated 20th May 2025 which seeks a review of the judgment delivered on 17th February 2025 in so far as it awarded costs of the appeal to the Respondent. The application is supported by the affidavit of Martin Mutisya Muthengi sworn on even date, wherein it is deponed that the appeal having been successful, the costs thereof ought to have been awarded to the Appellant/Applicant but not the Respondents. That the Respondents have now filed a bill of costs dated 1st April 2025 which was scheduled to be taxed on 10th July 2025 yet there is an apparent error on the face of the record.

2. The 2nd and 3rd Respondents did not participate in the application but the same was vehemently opposed by the 1st Respondent. It is contended that there is no error apparent on the face of the record as would warrant this court to review the order on costs; that the application was not brought timeously and that the application does not meet the threshold for invoking the equitable jurisdiction of this court and hence should be dismissed with costs to the 1st Respondent.

3. The application was canvassed by way of written submissions, those of the Appellant being dated 18th July 2025 and those of the 1st Respondent 5th August 2025. I see no need to reproduce the submissions here. Suffice it to state that I have considered the rival submissions, the cases cited thereat, the impugned order and the law.

4. The impugned order states:

> " 34. Costs of this appeal are awarded to the Respondent."

5. The order followed a successful appeal which had been filed by the Appellant/Applicant against three Respondents. The Appellant was the 1st Defendant in a case which the 1st Respondent had filed against the Appellant, the 2nd Respondent and the 3rd Respondent. The judgment of the court below was set aside in regard to the Appellant/Applicant but was upheld in respect to the 2nd and 3rd Respondents. However despite the Appellant/Applicant succeeding against the 2nd & 3rd Respondents it was condemned to the costs of the 1st Respondent. According to the Appellant/Applicant that was an error on the face of the record. The 1st Respondent thinks otherwise and contends the matter ought to have been resolved through an appeal rather than a review; that costs are in the discretion of the court and that the courts exercise of discretion in favour of the Respondent was grounded on the Respondent's lack of wrong doing and cannot be overturned merely because the Appellant/Applicant disagrees with it. Further, that this application is not brought in good faith as the Appellant/Applicant sat on its rights and only woke up when the Respondent filed a bill of costs for taxation and this court should not aid the indolent.

6. The power of this court for review is provided in Section 80 of the *Civil procedure Act* and order 45 Rules (1) and (2) of the Civil Procedure Rules which state:"[80] ReviewAny 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"[order 45]rules 1 & 2 - Application for review of decree or order [Order 45, rule 1]

(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.

7. An order or decree of the court can therefore be reviewed on any of the grounds listed in the rules. What constitutes an error apparent on the face of the record was discussed in the case of Nyamogo &

Nyamogo Advocates v Kogo [2001] EA 173 cited with approval in the case of Alpha Logistics (K) Ltd & another v Uplift Express limited & another [2009] KEHC 3205 (KLR) where the court stated:-

> "An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is a real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by a long drawn process of reasoning or on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was also possible. Mere error or wrong view is certainly no ground for a review although it may be for an appeal."

8. From the above case an error apparent on the record is one on a substantial point of law and which stares one in the face, and there could be possibly no two opinions. Applying the above test to the instant case it would be easy to state that there is an error apparent on the face of the record in so far as the costs of the appeal were not awarded to the successful party as is usually the norm because generally costs follow the event. However, a closer reading of the judgment of the court reveals that the court was intentional in awarding the costs to the Respondent. A closer reading of the judgment clearly indicates that by Respondent the court was referring to the 1st Respondent who was the plaintiff in the court below.

9. The Appellant bank herein did not adduce any evidence in case in the court below to prove it was merely a financier – see for instance paragraph 29 of the judgment where the judge stated:-

> "(29) In light of the above, due to lack of evidence on the part of the Appellant, I find that the Trial Court made a proper finding on this issue. The Appellant ought to have called its own witnesses or produce any evidence to support its contention. Courts have found Financiers not to liable on the basis of the evidence produced before it. The Appellant did file an application to be struck out but the same was dismissed and that application is not the subject of this appeal thus this court cannot address its mind to it."
>
> The judge nevertheless gave the Appellant bank the benefit of doubt based on documents attached to an application that had been earlier dismissed for want of prosecution and the Record of Appeal. Clearly, therefore, there is no error on the record of the court as would warrant this court to review the decision to award the 1st Respondent the costs. The order, was clearly issued based, as correctly submitted by Counsel for the 1st Respondent, on the lack of wrongdoing on the part of the 1st Respondent.

10. The upshot is that this appeal has no merit and the same is dismissed with costs to the 1st Respondent.

Orders accordingly.

RULING SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 30TH DAY OF APRIL 2026.

E. N. MAINA

JUDGE

In the presence of:

Mr. Masila for 1st respondent

No appearance for Appellant/Applicant

Mary - Court Assistant/Interpreter