

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION

MISC. CIVIL APPLN NO. 402 of 2021

MOHAMED KAKAY

APPLICANT

VERSUS

KENYA AIRWAYS LIMITED

RESPONDENT

RULING

(On Motion Dated 3/10/2026)

1. The Applicant herein **Mohamed Kakay** was dissatisfied with the **ruling** of the court **delivered on 17/07/2025**, in which the court set aside the Taxing Officers **ruling delivered on 15/10/2024** allowing instructions fees in the sum of Kshs. 203,200/= against him.
2. By a **Chamber Summons application dated 3/10/2025**, **Mohamed Kakay** returned to this court seeking review of the ruling of 17/07/2025, to correct alleged mistakes/errors on the face of the record pursuant to **Order 45 Rule 1 & 2 of the Civil Procedure Rules (CPR)** and dismiss the Application dated 14/11/2024 upon which the ruling was delivered.

3. The alleged apparent errors and or mistakes are stated thereof as;

- i) Misrepresentation of parties*
- ii) Indication that there was deposition by the Applicant that travel costs cannot be assessed unless there is specific prayer in the statement of claim;*
- iii) That the Applicant herein sought orders to set aside the decision of Hon. Eric Otieno Wambu of 15/10/2014; and*
- iv) That the Applicant sought to have the matter taxed a fresh by another taxing master.*

4. *Grounds for the summons are stated on its face and supported by the affidavit of the Applicant sworn on an even date. It is its deposition that this court made reference to the parties as the Applicant as the one who filed the reference and the Respondent to the one opposed to the Reference, that the party indicated as having made the reference was not actually the Applicant, but rather the Respondent, that it is clear that the ruling was made on the basis that the Applicant in the main suit is the one who made the reference, with the Respondent opposed to the reference which position is not correct; that the Respondent was the party that filed the reference application.*

5. It is upon the above, and the mix-up or mistake/error on the parties to the suit and the reference that the Applicant seeks the errors to be corrected by an order of review.
6. In opposition, the Respondent Kenya Airways Limited filed grounds of opposition dated 27/10/2025 in which it posits;-

- 1) *That the application is frivolous as the only ground for review of the ruling of 17/07/2025 is that there was misdescription of the parties in the ruling;*
- 2) *That the application for review does not impeach or challenge the substance of the decision of 17/07/2025, which set aside the Taxing Officers dated 15/10/2025.*
- 3) *That reliance by the court of submissions filed out of time is not a ground for review.*
- 4) *That the application is intended to delay the conclusion of the matter.*

Both parties filed their submissions. The court has considered the same.

Analysis and Determination

7. Upon consideration, the court flags what it considers worthy of a review order under **Order 45 CPR**; as the misdescription of the parties only, which will not interfere with the court's holding in the motion.

8. The Applicant's (**Mohamed Kakay**) complaint is correctly anchored on **Order 45 Rule Rule 1 CPR**; wherein it provides:-

1) Any person considering himself aggrieved-

a) By a decree or order for 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 due 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 was 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(emphasis mine)

9. **Section 80** of the **Civil Procedure Act (CPA)** empowers the court to review its orders or decree, and to make such order thereon as it thinks fit.

10. In my very considered view, the Applicant, has rendered by his affidavit material very clearly on what it considered "an

error apparent on the face of the record, that needs to be corrected by an order of review, as “Misrepresentation of the parties”, as captured at prayer 2(i) of its motion.

11. I fully agree to the above. It may not have been necessary for the Applicant to file the motion here, as the error being on misrepresentation of parties only, in my view, as **Section 99 of the Civil Procedure Act** empowers the court to amend his judgments, decrees or orders to correct clerical or arithmetical mistakes in its rulings, orders or decrees, or errors arising from accidental slip or omission, at any time, either by its own motion, or on the application of the parties. Such an application by the parties in respect to **Section 99 CPR** may be oral or by formal application. By this the Applicant could have brought the apparent error of misrepresentation of the parties to the courts attention, to which, being clear, the court could have corrected by way of an amendment formally.
12. Nevertheless, the **Applicant Mohamed Kakay** made this formal application.

In this case, I am persuaded to correct the apparent errors/mistakes. While I proceed to do so, the impugned chamber summons from which the ruling was in respect, is dated 14/11/2024.

The Applicant therein is stated as **Mohamed Kaykay**. The Respondent is stated as Kenya Airways Limited. On the face

of the record, the court was not too far off, as it cited the parties as stated in the motion.

The Applicant in the impugned ruling was **Kenya Airways Limited**, and the Respondent was **Mohamed Kaykay**. That is where and how the mix-up occurred. A genuine error on the part of the court.

13. This is not to say that the court did not err on the misrepresentation of the parties. No. it is just that it followed what the application stated, but omitted to state the correct applicant in the motion. To that end, **Order 45 Rule 1 CPR** is applicable.

As sought by the Applicant Kenya Airways Limited therefore, the error on the face of the record will be corrected as mandated at **Section 99 of the CPR**, alongside **Order 45 Rule 1 CPR** and shown in the Amended Ruling, annexed hereto.

14. The court has taken note of the parties cited authorities on the issue at hand. These are **Nyamogo & Nyamogo v. Kogo [2001] EA 170; National bank of Kenya Ltd v. Ndungu Njau [1997] eKLR, Central Bank of Kenya Limited vs. Uhuru Highway Development Co. Ltd Nairobi CA No. 75/1998** (unreported)

Of relevance in this chamber summons is that a review may be granted whenever the court considers it necessary to

correct an apparent error or omission on the part of the court; that the error must be apparent on the face of the record; that it does not require elaborate arguments and further that the error as envisaged does not invalidate the decision and may be corrected without affecting its substance.

15. In my considered opinion, the rest of issues raised by the Applicant herein do not fall under the purview of review and therefore are not for determination in the motion before the court.
16. **For the above reasons, the motion dated 3/10/2025 succeeds to the extent stated, to correct the citation interms of names of the parties. An amended ruling is annexed hereto for the court record and comfort of the parties.**

There shall be no orders on costs.

Orders accordingly.

Delivered Dated and Signed at Nairobi this 30th day of April 2026.

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JANET MULWA.

JUDGE

**Annexure - Ruling dated 17/07/2026, as amended on
this 30th Day of April 2026**

Annexure

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
DIVISION**

MISC. APPLICATION NO. E402 OF 2021

**MOHAMED KAKAY.....
RESPONDENT**

VERSUS

**KENYA AIRWAYS LIMITED.....
.....APPLICANT**

AMENDED RULING

(On Motion Dated 14/11/2024)

1. By a **Chamber Summons Application dated 14/11/2024**, the Applicant **Kenya Airway Limited**, pursuant to provisions of **Rule II (2) of the Advocates Remuneration Order** sought that the taxing officer's decision made on 15/10/2024 on his Bill of Costs dated 22/07/2020 be set aside reassessed; And in the alternative, the said Bill of costs be taxed afresh by a different taxing officer other than the Hon. Otieno Wambo, on grounds stated on its face, and in the supporting affidavit sworn on 14/11/2024 by Elvis Oyare, Advocate for the Applicant.
2. The Applicant's complaint is that while assessing the instructions fees at Kshs. 203,200/= the taxing officer included other costs being travel, accommodation and meals, costs spent by the Respondent while in Nairobi to testify that whereas the National Civil Aviation Administrative Review Tribunal did not order such costs to be paid.
3. It is further deposed that the taxing officer ignored the Applicants submissions and decisions that support court holdings that travel costs cannot be assessed unless there is a specific prayer for reimbursement of travel costs in the statement of claim and such costs are awarded in the judgment.

4. For the above, the Applicant sought the orders to set aside the decision as prayed.
5. The Applicant Kenya Airways Limited opposed the application by a replying affidavit sworn on 6/02/2025.
6. Both parties filed submissions to urge their rival respective positions as evidenced in their supporting and opposing affidavits.
7. The Applicant in its prayer No. 3 seeks that in the alternative, the impugned Bill of Costs dated 22/07/2020 be taxed afresh by a different taxing officer other than the officer whose decision is the subject of this ruling.
8. I have considered the reasons set out by the Applicant in the motion including its submissions. I have likewise considered the Respondent's reasons and submissions put forth.
9. Without a doubt, both parties have raised serious issues that must be interrogated afresh for purposes of arriving at a fresh well-analyzed reasoning on the items under dispute guided by the decisions cited and upon taking into account the tribunal's judgment from which the impugned bill of costs arises.
10. For the foregoing, I am persuaded that the decision of the taxing officer dated 15/10/2024 must be set aside.

It is hereby set aside and forwarded for fresh Taxation by the Hon. Deputy Registrar, Margaret Kurumbu. It

shall be listed for directions before the said Taxing officer on 6/8/2025.

11. Costs of the application shall abide by the outcome of the fresh taxation.

Orders accordingly.

Delivered Dated and Signed at Nairobi this 17th day of July, 2025.

Amended at Nairobi this 30th Day of April 2026.

JANET MULWA

JUDGE.