



Akwir v Alluvialtrade & Investment Company Limited (Civil Appeal E069 of 2024) [2025] KEHC 744 (KLR) (30 January 2025) (Judgment)

Neutral citation: [2025] KEHC 744 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E069 OF 2024
RE ABURILI, J
JANUARY 30, 2025**

BETWEEN

JARED OTIENO AKWIR APPELLANT

AND

ALLUVIALTRADE & INVESTMENT COMPANY LIMITED RESPONDENT

*(An appeal from the ruling of the Hon. G.C. Serem Resident Magistrate/
Adjudicator delivered on the 5.3.2024 in Kisumu Small Claims Court
Claim No. E058 of 2022 at the Kisumu Chief Magistrate's Court)*

JUDGMENT

Introduction

1. This appeal is related to Civil Appeal No. E072 of 2024. The appellant herein Jared Otieno Akwir was sued by the respondent vide a plaint dated 1.8.2022 for a sum of Kshs. 90,912 plus costs of the suit as the respondent alleged that it had supplied the appellant with farm inputs totalling Kshs. 90,912 which were to be paid for within 3 months.
2. The appellant denied the supply of the goods but indicated that in the event the goods were supplied then they did not harvest due to bad weather and that birds equally ate their crops.
3. In her judgement wrongfully dated 30.1.2022 instead of 30.1.2023, the trial adjudicator found in favour of the respondent and awarded it Kshs. 90,912 as claimed with interest.
4. The respondent subsequently took out a notice to show cause dated 17th October 2023 seeking the respondent to be committed to civil jail. The trial adjudicator in her ruling dated 1.2.2024 refused to order the appellant to civil jail and instead ordered that he pays the decretal sum in instalments of Kshs. 5,000 per month starting the 1.3.2024 until payment in full.



5. The appellant then filed a Notice of Motion dated 20.2.2024 seeking to review the trial court's judgment that had erroneously been dated 30.1.2022 on the grounds that there was an error apparent on the face of the record and further asserting that the only judgment on record was that dated 1.2.2024.
6. In her ruling dated 5.3.2024, the trial adjudicator dismissed the application stating that it was filed one year later after the impugned judgement in violation of section 41 (2) of the *Small Claims Court Act*.
7. Aggrieved by the said decision, the appellant filed a memorandum of appeal dated 4th April 2024 raising the following grounds of appeal;
 - a. That the learned trial adjudicator erred in law and fact in failing to find that there are serious errors on the face of the record which warrants a review of the judgement of the Honourable Court in that the claim was filed on 4.8.2022, proceedings commenced on 18.8.2022 but judgement signed and delivered on 30th January 2022 even before the suit was filed.
 - b. The learned adjudicator erred in law and in fact in failing to evaluate and analyse the record thus reaching a wrong decision.
 - c. That the learned trial adjudicator erred in law and fact in finding that the application for review had been filed after one year when in actual sense it was filed within 30 days' statutory period, judgement having been delivered on 1.2.2024 and not 30.1.2022.
 - d. That the learned trial adjudicator erred in law and fact in failing to review the judgement despite the glaring errors on the face of the record and the testimonies on the claimant.
 - e. That the learned trial adjudicator erred in law and fact in issuing another ruling delivered on 5.3.2024 full of errors despite having been informed of the blatant mistake and errors of the face of the record as the date of judgement now changed from 30.1.2022 to 30.1.2023 when no such judgement dated 30.1.2023 is on record.
 - f. That the learned trial adjudicator erred in law and fact in misconstruing the import of section 41 of the *Small Claims Court Act*.
 - g. That the learned trial adjudicator erred in law and fact in dismissing the appellant's application for review dated 20.2.2024 despite the application being meritorious.
8. The appeal was canvassed by way of written submissions with only the appellant filing his submissions.

The Appellant's Submissions

9. The appellant submitted that there are serious errors on the face of the record that warranted review in that the claim was filed on 4.8.2022, proceedings commenced on 18.8.2022 and judgment purported to have been signed on the 30.1.2022 which issue he raised in his application but was ignored by the trial adjudicator.
10. The appellant further submitted that he became aware of the aforementioned error after the judgment was delivered on 1.2.2024 when he was in court and after he had applied for the proceedings vide his application letter dated 12.2.2024.
11. It was his submission that the judgment was delivered on 1.2.2024 and could not have been delivered on the 30.1.2022 before the commencement of the claim and as such he had demonstrated that the issues raised in the application dated 20.2.2024 deserved review.



12. The appellant further submitted that the farm inputs delivered were in material form and not monetary form hence he used them well but due to natural disaster the crop never yielded to the required standard and as such the parties ought to have shared the costs of the input equally.

Analysis and Determination

13. I have considered the pleadings herein and the submissions by the appellant. This appeal is a final appeal from the Small Claims Court and is expected to be on points of law only.
14. The main issue for determination is whether the appellant met the threshold for the grant of orders of review.
15. Firstly, I note that the judgment sought to be reviewed by the appellant herein was the one erroneously dated 30.1.2022 instead of 30.1.2023, the learned adjudicator found in favour of the respondent and awarded it Kshs. 90,912.
16. Section 99 *Civil Procedure Act* provides:
- “Clerical or arithmetical mistakes in judgements, decrees or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of its own motion or on the application of any of the parties.”
17. Section 100 *Civil Procedure Act* provides:
- “The court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceeding.”
18. All the mistakes and errors mentioned in Section 99 and 100 *Civil Procedure Act* are provided for under Order 45 Rule 2 (1) *Civil Procedure Rules*.
19. Accordingly, the learned adjudicator was well within the law, contrary to allegations by the appellant, when in her ruling delivered on 5.3.2024 she corrected the date of judgment in issue from 30.1.2022 to 30.1.2023.
20. Turning to whether the appellant warranted grant of the order of review, the *Small Claims Court Act* provides for Review in Section 41 of the *Act* as follows:-

“Review of orders or awards of the Court

1. An Adjudicator may, on application by any aggrieved party or on his or her own motion, review any order of the Court on the ground that—
 - a. the order was made ex-parte without notice to the applicant;
 - b. the claim or order was outside the jurisdiction of the Court;
 - c. the order was obtained fraudulently;
 - d. there was an error of law on the face of the record; or
 - e. new facts previously not before the Court have been discovered by either of the parties.



2. The application referred to under subsection (1) shall be made within thirty days of the order or award sought to be reviewed or such other period as the court may allow."
21. In the Claim before the Small Claims Court, the appellant sought review on the grounds that there was an error apparent/mistake on the face of the record specifically that the date of the judgement was signed as 30.1.2022 instead of 30.1.2023.
22. As earlier herein discussed, this was an error curable under section 99 and 100 of the Civil Procedure Act. The appellant therefore did not meet the threshold of orders of review.
23. Furthermore, the application for review was brought more than a year after the impugned judgment had been delivered. Section 41(2) of the small claims court provides:
 - “2. The application referred to under subsection (1) shall be made within thirty days of the order or award sought to be reviewed or such other period as the court may allow.”
24. Additionally, the error of law that is to be reviewed must be apparent on the face of the record. There does not need to be arguments. This is an error that can be seen by all.
25. In the instant case, the error complained of was a clerical error which was corrected by the learned trial adjudicator.
26. Averments by the appellant that the decision being complained of was that dated 1.2.2024 is a contradiction of his own pleadings and an attempt to mislead this Court.
27. In the circumstances, it is my considered view that the appellant did not meet the threshold of grant of orders of review. Accordingly, I find and hold that the applications dated 20.2.2024 was thus properly dismissed.
28. In the circumstances, I find that this appeal lacking in merit and proceed to dismiss it with no orders as to costs.
29. The judgment to be uploaded and published in the e-portal and a copy thereof be sent to the trial court with the original court record.
30. This file is closed.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF JANUARY, 2025 VIA MICROSOFT TEAMS

R. E. ABURILI

JUDGE

