



**Otieno v Alluvial Trade & Investment Co Ltd (Civil Appeal  
E072 of 2024) [2025] KEHC 847 (KLR) (30 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 847 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL APPEAL E072 OF 2024  
RE ABURILI, J  
JANUARY 30, 2025**

**BETWEEN**

**RUTH ATIENO OTIENO ..... APPELLANT**

**AND**

**ALLUVIAL TRADE & INVESTMENT CO LTD ..... 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. The appellant herein Ruth Atieno Otieno 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 she did not harvest due to bad weather and that birds equally ate their crops.
3. In her judgement 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 as claimed with interest.
4. The respondent subsequently took out a notice to show cause dated 17<sup>th</sup> October 2023 seeking the appellant to be committed to civil jail. The learned adjudicator in her ruling dated 1.2.2024 refused to order the appellant to be committed to civil jail and instead ordered that she 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 judgement on record was that dated 1.2.2024.

6. In her ruling dated 5.3.2024, the learned adjudicator dismissed the application stating that it was filed one year later after the impugned judgment 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 4<sup>th</sup> 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 30<sup>th</sup> 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, judgment 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 judgment 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 her 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 judgement purported to have been signed on the 30.1.2022 which issue she raised in her application but was ignored by the trial adjudicator.
10. The appellant further submitted that she became aware of the aforementioned error after the judgement was delivered on 1.2.2024 when she was in court and after she had applied for the proceedings vide his application letter dated 12.2.2024.
11. It was her submission that the judgement 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 she 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 she 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. This appeal must be on a point of law only and this is the final court on appeals from the Small Claims Court. This is pursuant to Section 38 of the [Small Claims Court Act](#) which provides:
  - “38. A person aggrieved by the decision or an order Appeals. of the Court may  
(1) appeal against that decision or order to the High Court on matters of law. (2)  
An appeal from any decision or order referred to in subsection (1) shall be final.”
14. What constitutes, points of law, is now settled. In the case of Peter Gichuki King'ara Vs IEBC & 2 Others, Nyeri Civil Appeal No. 31 Of 2013, (Court of Appeal) (Visram, Koome & Odek, JJA) Of 13.02.2014, the Court of Appeal stated as follows: -
  - “It was held that it is trite law that the exercise of judicial discretion is a point of law and that the trial court in denying a prayer of scrutiny is exercising judicial discretion. The Court concluded that it would not be feasible for the Court of Appeal to order for a recount and scrutiny as this would involve matters of fact that were within the jurisdiction of the trial court. The court further held that the question of whether the trial judge properly considered and evaluated the evidence and arrived at a correct determination that is supported by law and evidence – with the caveat that the appeal court did not see the witness demeanor – is an issue of law.”
15. The issues of failure to exercise discretion is equally a point of law. In the case of Otieno, Ragot & Company Advocates v National Bank of Kenya Limited [2020] eKLR, the court stated:
  - “This is a second appeal. I am alive to my duty as a second appellate court to determine matters of law only unless it is shown that the courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse. (See: Stanley N. Muriithi & Another versus Bernard Munene Ithiga (2016) eKLR).
16. In Twaher Abdulkarim Mohamed v Independent Electoral and Boundaries Commission (IEBC) & 2 others, (2014) eKLR the court stated as doth: -
17. Although the phrase ‘a matter of law’ has not been defined by the [Elections Act](#), it was been held in Timamy Issa Abdalla Vs Swaleh Salim Swaleh Imu & 3 Others, Malindi Civil Appeal No. 39 Of 2013 (Court Of Appeal), (Okwengu, Makhandia & Sichale, JJA) of 13.01.2014 that a decision is erroneous in law if it is one to which no court could reasonably come to, citing *Bracegirdle vs Oxney* (1947) 1 All ER 126.
18. I have considered the pleadings herein and the submissions filed by the appellant in support of the appeal. The main issue for determination is whether the appellant met the threshold for the grant of orders of review.
19. Firstly, I note that from the trial court record, the judgment sought to be reviewed by the appellant herein was the one 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.



20. Section 99 *Civil Procedure Act* provides that:
- “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.”
21. 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.”
22. 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.
23. Accordingly, the trial 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 the judgment in issue from 30.1.2022 to 30.1.2023.
24. 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.”
25. 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. she also claimed 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 she had demonstrated that the issues raised in the application dated 20.2.2024 deserved review.
26. As earlier herein discussed, there was an error in dating the judgment, which error was curable under sections 99 and 100 of the *Civil Procedure Act* on the court’s own motion or on application by any party to the suit. The appellant therefore did not meet the threshold of orders of review.



27. Furthermore, as observed by the learned Adjudicator, 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 Act* provides that:

“(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.”

28. 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. Though indicated as an error of law, it is in fact an error related to a matter of fact. In the instant case, the error complained of was a clerical error which was corrected by the trial adjudicator under the powers granted by sections 99 and 100 of the *Civil Procedure Act*.

29. Averments by the appellant that the decision being complained of was that dated 1.2.2024 is a contradiction of her own pleadings and an attempt to mislead this Court. She appears not to have read the court file to appreciate the proceedings therein and was relying on her own imaginations.

30. In the circumstances, it is my considered view that the appellant did not meet the threshold of grant of orders of review. Accordingly, the applications dated 20.2.2024 was thus properly dismissed.

31. In the circumstances, I find that this appeal lacks merit and proceed to dismiss it with no orders as to costs.

32. This judgment to be uploaded in the e-portal and published.

33. The file is closed and the trial court record to be returned forthwith, with copy of the judgment herein.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30<sup>TH</sup> DAY OF JANUARY, 2025 VIA MICROSOFT TEAMS.**

**R. E. ABURILI**

**JUDGE**

