



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ndungu v Kibiri (Civil Appeal E252 of 2021)  
[2025] KEHC 1012 (KLR) (Civ) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1012 (KLR)

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

**CIVIL  
CIVIL APPEAL E252 OF 2021**

**JN MULWA, J**

**FEBRUARY 28, 2025**

**BETWEEN**

**BENSON M. NDUNGU ..... APPLICANT**

**AND**

**LUCY WAIHIRA KIBIRI ..... RESPONDENT**

**RULING**

1. Before the Court for determination is the Motion filed by Benson M. Ndungu (hereafter the Applicant) dated 19/02/2024 brought pursuant to Order Section 3A and 99 of the [Civil Procedure Act](#) (CPA), Order 45 Rule 1(b) & 3 and Order 51 of [Civil Procedure Rules](#) (CPR) seeking: -
  1. Spent
  2. That this Honorable Court be pleased to review the judgment delivered on 08/02/2024 on account of an error on the face of the record.
  3. Spent
  4. That the cost of the application be provided for.
2. The grounds on the face of the motion are amplified in the support affidavit sworn by Colleta Wambua, counsel on record for the Applicant. The gist of the deposition by counsel is that judgment in the instant matter was delivered on 08.02.2024 in favour of Lucy Waithera Kibiri (hereafter the Respondent) whereupon request for a copy and receipt thereof, counsel noticed a glaring error on the ratio of liability awarded which was captured in the body of the judgment as 60:40 with the one employed to compute the quantum of damages at the tail end of the judgment being 70:30. That as a result of the error, the amount due to the Respondent was inflated thus hindering the Applicant's



- ability to settle the judgment. The applicant has urge the court to allow the motion for ends of justice to be done.
3. Directions were taken on the motion on disposal of the same by way of written submissions. Despite being accorded ample opportunity the Respondent failed and or opted not to file a response or submissions. Nevertheless, the Court has duly considered the Applicant’s submissions filed in respect of the motion.
  4. The Applicant’s motion invokes inter alia the provisions of Section 3A of the [CPA](#) as well as Order 45 Rule 1(b) of the [CPR](#). The former provision, specifically reserves “the inherent power of the court “to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the court” of which its implication was reasonably addressed by the Court of Appeal in [Rose Njoki King’au & Another v Shaba Trustees Limited & Another](#) [2018] eKLR.
  5. Alongside the above provision, the Applicant has equally invoked Section 99 of the [CPA](#), proverbially known as the “slip rule”, which provides that: - “Clerical or arithmetical mistakes in judgments, 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.” The above provision was succinctly discussed by the Supreme Court in [Outa v Okello & 3 others](#) [2017] KESC 25 (KLR) while addressing itself to the provisions of Section 21 (4) of the [Supreme Court Act](#) which is *pari materia* with Section 99 of the [CPA](#).
  6. An *ex facie* review of the Applicant’s motion and submissions thereto, it appears that the motion is specifically grounded on Order 45 of the [CPR](#), to wit, the impugned ruling of this Court sought to be reviewed was delivered on 08/02/2024. By dint of Order 45 of the [CPR](#) as read with Section 80 of the [CPA](#) this Court is empowered to review its orders or judgments and make such orders as it may think fit, on conditions thereto to being: -
    - a. ....
    - b. On account of some mistake or error apparent on the face of the record, or
    - c. For any other sufficient reason and
    - d. That the Application has to be made without unreasonable delay”
  7. The purport of Order 45 of the [CPR](#) has been the subject of numerous decisions within our jurisdiction meanwhile it has since been settled that the provision involves exercise of judicial discretion as observed in [Jason Ondabu t/a Ondabu & Company Advocates & 2 Others v Shop One Hundred Limited](#) [2020] eKLR. By the grounds amplified in support of the motion, the Applicant seeks to invoke this Court’s discretion to review its judgment rendered on 08/02/2024 on account of mistake or error apparent on the face of the record. An application for review specifically premised on Order 45(1)(b) of the [CPR](#) must appertain an error or omission self-evident and ought not require and elaborate argument to be established as addressed by the Court of Appeal in [National Bank of Kenya Ltd v Ndungu Njau](#) [1997] eKLR and [Multichoice \(Kenya\) Ltd v Wananchi Group \(Kenya\) Limited & 2 Others](#) [2020] eKLR.
  8. The judgment of this Court having been delivered on 08/02/2024 the Applicant moved this Court vide the instant motion on 19/02/2024 without unreasonable delay in presenting the same.
  9. As to whether the motion has reasonably demonstrated mistake or error apparent on the face of the record, the court took the liberty of reviewing the judgment. The appeal before this Court that was disposed of by a decision rendered on 08/02/2024 challenged the lower Court’s finding on both liability and awarded damages. Upon consideration of the lower Court record, record of appeal and



submissions on appeal, the judgment on liability was set aside and re apportioned at 60:40 basis in favour of the Respondent as stated at Paragraph 18 of the judgment. However, at paragraph 28 of the same judgment, the court proceeded to capture apportionment of liability at 70:30 in favour of the Respondent and thereafter subjected the above apportionment on the final award of damages of Kshs. 2,692,000/-.

10. Manifestly, the mistake or error apparent on the face of the record was occasioned by an inadvertent typographical error by the Court. In the body of the judgment, the Court had in detail analyzed the trial Court's finding on liability and conclusively arrived that the same warranted interference given that both parties contributed to the accident, albeit at different proportions. Therefore, for all intents and purposes the Court had intended to apportion liability as between the parties, to wit, it can be concluded that the error or omission in the judgment is self-evident and does not require an elaborate argument given that the position on liability was arrived at upon a detailed exposition on liability as juxtaposed against decided case law.
11. The Court is therefore convinced that the Applicant has demonstrated a mistake or error apparent on the face of the record, and by reviewing the award on liability to reflect the proper intent of the Court and or body of the judgment, the Court will not be sitting on appeal over its own decision.
12. For the above reasons, the Court finds and holds that the application dated 19/02/2024 is merited and meets the requirements and conditions provided under Order 45 Rule 1 of the CPR. Thus, the commending order and for the avoidance of doubt, the judgment of this Court delivered on 08/02/2024 at Paragraph 28 is reviewed to read as follows: -
  1. Liability shall be and is hereby apportioned at 60:40 in favour of the Respondent
  2. General damages for pain and suffering and loss of amenities shall be reduced from Kshs. 2,300,000/= to Kshs. 1,800,000/=
  3. Loss of earning capacity; damages of Kshs. 3,680,640/= is dismissed as not pleaded and or proved.
  4. Future medical expenses of Kshs. 750,000/- is upheld.
  5. Special damages of Kshs. 142,000/= is upheld.
  6. Total award Kshs. 2,692,000/=. This sum shall be subjected to a 40% reduction of Kshs. 1,076,800/= leaving a sum of Kshs. 1,615,200/= to the Respondent.
13. The Court apologizes to the parties for the inadvertent typographical error and accordingly directs that each party bears its own cost of the motion.

Orders accordingly.

**DELIVERED DATED AND SIGNED AT NAIROBI THIS 28<sup>TH</sup> DAY OF FEBRUARY, 2025.**

.....

**JANET MULWA.**

**JUDGE**

