



Republic v Chief Magistrate Milimani Commercial Law Courts & another; East Aberdare Contract Kenya Ltd (Interested Party); Mbatha & another (Exparte Applicants) (Application E091 of 2023) [2025] KEHC 3935 (KLR) (Judicial Review) (28 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3935 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
APPLICATION E091 OF 2023
JM CHIGITI, J
MARCH 28, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

**CHIEF MAGISTRATE MILIMANI COMMERCIAL LAW COURTS 1ST
RESPONDENT**

KISERIAN DEVELOPMENT CO. LTD 2ND RESPONDENT

AND

EAST ABERDARE CONTRACT KENYA LTD INTERESTED PARTY

AND

PAUL MBATHA EXPARTE APPLICANT

SAMMY NDAMBUKI MULI EXPARTE APPLICANT

RULING

1. The application before this Court is the Notice of Motion 12th April, 2024. The application is brought Under Article 159(2)d of *the Constitution*, Order 45 of the Civil Procedure Rules, the *Law Reform Act* and all enabling provisions of the Law. It seeks the following orders:
 1. That this application be certified urgent and be heard ex parte in the first instance;



2. That pending the interpartes hearing of this Application the Court do issue a temporary stay of execution in Milimani Commercial Chief Magistrate Civil Suit No. 8046 Of 2016; Kiserian Development Company Limited Versus East Aberdare Contract Kenya Limited & 3 Others.
3. That pending the hearing and determination of this Application and Petition the Court do issue a stay of execution in Milimani Commercial Chief Magistrate Civil Suit No. 8046 Of 2016; Kiserian Development Company Limited Versus East Aberdare Contract Kenya Limited & 3 Others.
4. That the Court be pleased to review and or vary the Judgment delivered on 8th April 2024 to the effect that;
 - a. Paragraph 102 be reviewed and or varied to read;
 - b. The Application dated 19th July 2023 is merited.
 - c. The Order after paragraph 102 to read,
 - d. The application dated 19th July, 2023 is allowed with costs.
 - e. That the Honourable Court to make any other orders it deems just.
2. The application is supported by a Supporting Affidavit by Paul Mbatha sworn on even date.
3. It is the Applicants' case that they filed a Judicial Review Application before this Honourable court seeking quashing of the proceedings before the Chief Magistrate in Milimani Commercial Chief Magistrate Civil Suit No. 8046 Of 2016; Kiserian Development Company Limited Versus East Aberdare Contract Kenya Limited & 3 Others through an order of certiorari for the reason the court lacked pecuniary jurisdiction to hear and determine the suit as the claim amounted to Kshs. 24,480,000.00, which exceeded the statutory limit of Kshs. 20,000,000.00 set under Section 7(1)(a) of the Magistrates' Courts Act.
4. This Honourable court vide its Judgement delivered on 8th April 2024, held inter alia, that;
 - “ 100. The 2nd Respondent claim as at the time of filing the suit was a total of Kshs. 24,480,000.00 being, the Claimed contract sum of Kshs.18 Million plus Nine (9) months' interest a total of Kshs. 6,480,000.
 101. The amount that was claimed by the 2nd Respondent at the time of filing its claim having been over and above the prescribed Kshs. 20 Million limit fell well outside the jurisdiction of the Chief Magistrate court and I so hold.”
5. It is contended that this honourable Court in what appears to be an error apparent, dismissed the Judicial Review Application with costs despite having expressly found that the Chief Magistrate did and does not have the requisite jurisdiction.
6. The Applicants posited that this resulted in confusion from the fact that;
 - a. The proceedings before the trial court have not been quashed meaning execution may proceed; and
 - b. The Chief Magistrate, or any Magistrate for that matter, cannot preside over the proceedings because this Court, a High Court, has made a binding finding that the matter falls outside the jurisdiction of the Chief Magistrate.



7. The Applicants are thus seeking clarity on the import of the judgment delivered by this Honourable Court particularly paragraph 102 which does not appear to stem from the analysis and findings of the Court and the final disposition.
8. The Applicants canvassed their application with written submissions dated 27th October, 2024.
9. It is submitted that an error apparent on the face of the record occurs when a mistake is so evident that it does not require elaborate argument to establish, as explained in *Nyamogo & Nyamogo Advocates v. Kogo* [2001] EA 170. In this case, the contradiction between the Court's finding on jurisdiction and its final order constitutes such an error.
10. According to them the Court should have granted the orders sought, quashing the proceedings and judgment of the Chief Magistrate's Court due to lack of jurisdiction such that the failure to do so warrants a review to align the judgment with the legal position that a decision made without jurisdiction is a nullity. See *Owners of the Motor Vessel "Lilian S" v. Caltex Oil (Kenya) Ltd* [1989] KLR 1.
11. It is their submission that the Court can apply the Slip Rule to correct the judgment which rule provides a mechanism for correcting such errors when they are evident and do not require detailed deliberation
12. The Applicants invoke Section 99 of the [Civil Procedure Act](#) which allows courts to rectify clerical or arithmetical mistakes or errors arising from accidental slips or omissions.
13. Reliance is placed in the case of *Raindrops Limited v. County Government of Kilifi & Another* [2021] eKLR which confirms that the Slip Rule may be invoked to correct apparent errors that do not require a substantive re-evaluation of the case.
14. Reliance is also placed in *Republic v. Judicial Inquiry into Goldenberg Affair Ex Parte Mwalulu* [2004] eKLR where the court clarified that decisions made without jurisdiction are nullities and not subject to the time limits under Section 9(3) of the [Law Reform Act](#) for applications for certiorari. The error in the judgment could therefore be corrected without any limitation, as the original decision was a nullity due to the Chief Magistrate's lack of jurisdiction.
15. The Applicants thus seek an order reviewing and varying the judgment delivered on 8th April 2024 to quash the proceedings and decision in *Milimani Commercial Chief Magistrate Civil Suit No. 8046 of 2016*, aligning the final order with the Court's findings on the lack of jurisdiction.

2nd Respondent's case;

16. The 2nd Respondent in opposition of the application filed grounds of opposition dated 10th June 2024. It is contended that: -
 1. The Application is vexatious, misconceived and an abuse of the court process.
 2. The Application does not meet the threshold for review under Order 45 of the Civil Procedure Rules, 2010 as it does not elicit the discovery of any new and important matter or evidence which was not within their knowledge or disclose any mistake or error apparent on the face of the record.
 3. The issues raised in the instant Application are similar to the issues raised by the 2nd ex-parte Applicant at the Court of Appeal Case Number COACA E411 of 2024 and Civil Application Number E182 of 2024; *Sammy Ndambuki Muli v the Chief Magistrate Commercial law Courts & 2 Others*. The said Appeal and Application are currently pending determination



before the Court of Appeal and this Honourable Court therefore, ought to take judicial notice of the same.

4. There being an appeal preferred at the Court of Appeal Case Number COACA E411 of 2024 and Civil Application Number E182 of 2024; Sammy Ndambuki Muli v the Chief Magistrate Commercial Law Courts & 2 Others this Honourable court lacks the jurisdiction to entertain the present Application for review.
17. The 2nd Respondent filed written submissions dated 4th February, 2025.
18. It is submitted that the Applicants Notice of Motion Application dated July 19, 2023 (the Judicial Review Application) filed in this suit was found unmerited and the same dismissed the same with costs.
19. It is contended that The Applicant's claim involves a difference in legal interpretation, which is not the self-evident error required for a successful review under Order 45.
20. Reliance is placed in National Bank of Kenya Ltd v Ndungu Njau (1997) eKLR, where the Court of Appeal held that if an issue requires extensive legal argument to establish, it cannot qualify as an error apparent. The court pronounced itself thus:

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require elaborate arguments to be established.”
21. See also Nyamogo & Nyamogo Advocates v Kogo {2001} EA 170 and Pancras T. Swai v Kenya Breweries Limited [2014] eKLR.
22. It is also submitted that the alleged error is not self-evident, and would require a complex inquiry and falls outside the purview of review and can only be a matter for appeal.
23. Reliance is also placed in the case of Omote & another v Ogutu (Civil Appeal E00S of 2021) [2022] KEHC 16441 (KLR) (19 December 2022) (Ruling) when determining an application for review on the basis of costs not awarded, Gikonyo, J held as follows: -

“The fact that a party believes that the court should have reached a different conclusion or that the decision was erroneous are matters fit for appeal rather than review which is limited in scope...

Similarly, the request herein entails a re-appraisal of the evidence and re-analyzing its decision to establish whether or not the applicant is entitled to costs- something which is beyond the scope of review jurisdiction.

[22) Accordingly, the supposedly 'mistake or error apparent on the face of the record' is not a misstate or error in the sense of the law for which review may be granted.”
24. It is contended that the Applicants have misinterpreted the doctrine of “out of nothing comes nothing” which principle merely affirms that if a court lacks jurisdiction, any actions it takes are null and void.



25. The 2nd Respondent argues that Applicants have misconstrued and misapplied the provisions of Section 99 of the [Civil Procedure Act](#) on the application of the Slip Rule. Section 99 provides as follows:
- “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.”
26. According to the 2nd Respondent, the judgement of this Honourable Court dated 8th April 2024 neither elicits any clerical or arithmetic mistake nor does it denote any error arising from an accidental slip or omission to warrant the corrections envisaged under Section 99 of the [Civil Procedure Act](#).
27. It is also its case that the Applicants cannot use Article 159 to bypass the requirements for review under Order 45.
28. It is the 2nd Respondent’s case that the Application for review on the ground of an error apparent on the face of the record is without merit and ought to be dismissed with costs.

Analysis and determination;

29. Section 99 of the [Civil Procedure Act](#) provides as follows:
- “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.”
30. In *Omote & another vOgotu (Civil Appeal E00S of 2021) [2022] KEHC 16441 (KLR) (19 December 2022)* (Ruling) when determining an application for review on the basis of costs not awarded, Gikonyo, J held as follows: -
- “The fact that a party believes that the court should have reached a different conclusion or that the decision was erroneous are matters fit for appeal rather than review which is limited in scope...
- Similarly, the request herein entails a re-appraisal of the evidence and re-analyzing its decision to establish whether or not the applicant is entitled to costs- something which is beyond the scope of review jurisdiction.
- [22] Accordingly, the supposedly ‘mistake or error apparent on the face of the record’ is not a misstate or error in the sense of the law for which review may be granted.”
31. What the Applicants are asking the court to do is not as simple as the Applicants has put it. It is not merely a case of a Clerical or arithmetical mistake in judgment. There is more. The outcome has an impact on the question of the trial court’s jurisdiction, which is a weighty issue which is best handled at an appellate level.
32. Interfering with the judgment of the court, will amount to this court sitting to an appeal of its own judgment, which offends the hierarchical arrangement of the courts.

Disposition;

33. The application lacks merit.



Order;

The application is here by dismissed with costs

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF MARCH 2025

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J. CHIGITI (SC)

JUDGE

