



**Kabansora Millers Ltd v Nyangena (Civil Appeal E665 of 2022)
[2025] KEHC 4754 (KLR) (Civ) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4754 (KLR)

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

**CIVIL
CIVIL APPEAL E665 OF 2022**

TW CHERERE, J

MARCH 27, 2025

BETWEEN

KABANSORA MILLERS LTD APPELLANT

AND

MAUREEN MOKEIRA NYANGENA RESPONDENT

RULING

Ruling On Application For Review

1. By judgment delivered on 12th August 2022, the Respondent was awarded damages in the sum of KES. 127,300 plus costs of the suit and interest for damages caused to M/V KCX 443.
2. Dissatisfied with the said judgment, the Appellant preferred this appeal. In a judgment delivered on 26th July 2024, the appeal was allowed, primarily on the ground that the Respondent had failed to establish a nexus between herself and M/V KCX 443, the subject vehicle for which the damages had been awarded.
3. Respondent has now filed the Notice of Motion dated 14th November 2024 seeking a review of the court's judgment delivered on 26th July 2024. The application is brought pursuant to Order 45 Rules 1 and 2, and Order 51 Rule 1 of the Civil Procedure Rules, and Sections 3, 3A, and 80 of the *Civil Procedure Act*. The primary ground for the application is the existence of new and important evidence which was not within the Respondent's knowledge at the time of the trial and appeal.
4. The application is supported by an affidavit sworn by the Respondent on 14th November 2024. She annexed a copy of official records showing that motor vehicle KCX 443 was registered in her name on 08th February 2022.



5. The Appellant opposed the application through grounds of opposition dated 15th November 2024, stating:
 1. An appeal from the Small Claims Court is final.
 2. The court is functus officio.
 3. The material presented is not new evidence.
6. The Appellant further relied on written submissions dated 21st March 2025, reiterating the above grounds and asserting that granting the orders sought would result in serious prejudice.

Analysis and Determination

7. I have considered the application in light of the affidavits on record, the submissions made by the Appellant, the absence of any submissions by the Respondent, and the previous court proceedings. Accordingly, I have identified the following issues for determination:
 1. Whether the court is functus officio
 2. Whether the application meets the threshold for review
8. There is no dispute that this is a first and last appeal from the Small Claims Court. Section 38 of the [Small Claims Court Act](#) is clear that appeals to this Court are final and on points of law only. The section provides:

“ 38. Appeals

 - (1) A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law.
 3. An appeal from any decision or order referred to in subsection (1) shall be final.
9. The doctrine of functus officio dictates that once a court has rendered its final decision, it ceases to have jurisdiction over the matter, save for specific exceptions such as review or correction of clerical or arithmetical errors.
10. In expounding on the functus officio doctrine, the Supreme Court in [Odinga v Independent Electoral & Boundaries Commission & 3 others \(Petition 5, 4 & 3 of 2013\)](#) [2013] KESC 8 (KLR) (Civ) (24 October 2013) (Ruling) where the Supreme Court held that once a court delivers its judgment, it becomes functus officio and cannot review or reopen the matter unless provided under specific provisions of the law to ensure legal certainty and justice.
11. In [Telkom Kenya Limited v Ochanda \(Suing on his own Behalf and on Behalf of 996 Former Employees of Telkom Kenya Limited\)](#) [2015] KESC 18 (KLR), and [Kenya Airports Authority v Mitu-Bell Welfare Society & 2 others](#) [2016] eKLR, the Court of Appeal reaffirmed the doctrine of functus officio, holding that once a court has fully and finally adjudicated upon a matter, it cannot reopen or reconsider the case, except under defined circumstances such as through a successful application for review.



12. The *functus officio* principle serves to ensure finality in judicial decisions and prohibits courts from revisiting matters already conclusively determined, except where expressly permitted by law. It promotes judicial efficiency, certainty, and the integrity of the judicial process.
13. In the present case, the Respondent has invoked Order 45, which provides for review under specific grounds, including the discovery of new and important evidence, an error apparent on the face of the record, or any other sufficient reason. In light of this, the court is not necessarily *functus officio*, and may consider the application on its merits within the confines of the review jurisdiction.

Whether the application meets the threshold for review

14. The jurisdiction of the court to review its orders is derived from Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules. The permissible grounds for review are narrowly circumscribed and include:
 - a) The discovery of new and important evidence which, despite the exercise of due diligence, was not within the applicant's knowledge or could not be produced at the time the order was made
 - b) A mistake or error apparent on the face of the record or
 - c) Any other sufficient reason.
15. In *National Bank of Kenya Limited v Ndungu Njau* [1997] KECA 71 (KLR), the Court of Appeal held that a review will not be granted on grounds that merely amount to a re-argument of the case or dissatisfaction with the court's findings. The error must be self-evident and not one that requires an extensive or elaborate reasoning process to establish.
16. Similarly, in *Stephen Gathua Kimani v Nancy Wanjira Waruingi t/a Providence Auctioneers* [2019] KECA 594 (KLR), the Court of Appeal emphasized that review is not a mechanism for challenging a judge's reasoning or exercise of discretion, unless the challenge is grounded on an error apparent on the face of the record or the emergence of new and important evidence that could not, with reasonable diligence, have been adduced earlier.
17. The Respondent's application for review is premised on the alleged discovery of documentary evidence indicating that the subject motor vehicle, M/V KCX 443, was registered in her name as of 08th February 2022, prior to the trial. She contends that this registration record was not within her knowledge at the time of the trial or the appeal and thus constitutes new and important evidence justifying review.
18. However, the said certificate of registration is dated well before the trial and could, with reasonable diligence, have been obtained and presented during the original proceedings or on appeal. The court is not satisfied that this evidence was either inaccessible or undiscoverable through the exercise of due diligence at the material time. Accordingly, it does not meet the threshold of "new and important evidence" as contemplated under Order 45 Rule 1.
19. The law is well settled that a review is not intended to serve as an avenue for re-litigating matters that were, or ought to have been, addressed during the original hearing or on appeal. As affirmed in *National Bank of Kenya Limited v Ndungu Njau* and *Stephen Gathua Kimani v Nancy Wanjira Waruingi* (*supra*), an application for review must be founded on compelling circumstances such as the discovery of new evidence or an error apparent on the face of the record and not on mere dissatisfaction with the outcome of the decision.



20. In the present matter, the Respondent has not demonstrated that the evidence now being relied upon was unavailable at the time of the original proceedings despite the exercise of reasonable diligence. As such, the threshold for review under Order 45 has not been met.

21. Accordingly, the Notice of Motion dated 14th November 2024 is hereby dismissed with costs to the Appellant.

DELIVERED AT NAIROBI THIS 27TH DAY OF MARCH 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Mr. Wandere

For Appellant - Mr. Chamwada for Chamwada & Associates Advocates

For Respondent - Mr. Kiamba for Kiamba & Siboe Advocates

