



REPUBLIC OF KENYA



KENYA LAW
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**Gumba v Microfinance (Civil Appeal E093 of 2022)
[2024] KEHC 4228 (KLR) (25 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4228 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CIVIL APPEAL E093 OF 2022
RPV WENDOH, J
APRIL 25, 2024**

BETWEEN

LEONARD OKUMU GUMBA APPLICANT

AND

FAULU MICROFINANCE RESPONDENT

RULING

1. The application for consideration is dated 16/8/2023 in which Leonard Okumu Gumba (the applicant) is seeking: -
 1. That this court be pleased to review and/or vary its judgement delivered on 18/7/2023 to read;
 - a. The appellant is hereby awarded a sum of Kshs. 400,000/= as damages for the illegal and unlawful repossession of his motor vehicle KAW 715M.
 - b. That the appellant is hereby awarded a sum of Kshs. 150,000/= for the unlawful and illegal public embarrassment during the repossession of the suit motor vehicle.
 - c. The appellant is hereby awarded half of the costs of the lower court suit and half of the costs of this appeal.
 - d. The appellant is hereby awarded compensation for loss of income.
 - e. Interest on the damages and costs to run from the date of this judgement.
 2. That there should be no orders as to costs.
2. The application is based on the grounds found on the face of the application and the supporting affidavit of the applicant. It was deposed that the cost of motor vehicle KAW 715M (suit motor vehicle) was Kshs. 380,000/= as per the agreement form on record; that upon purchase of the suit motor vehicle, the applicant used Kshs. 20,000/= to transport it from Mombasa to Migori; that the applicant



was not able to carry valuation of the suit motor vehicle since the respondent had already sold it which in turn affected his business of supplying tree seedling and agricultural produce to various schools. The applicant further deposed that he be compensated for the loss of income and the application be allowed.

3. The application was opposed. Faulu Microfinance (the respondent) through Fredrick Nyabuti, its Legal Officer filed a replying affidavit sworn and dated on 5/12/2023. It was deposed that the application is incurably defective as the applicant has not extracted or attached the order that it seeks to review as required under Section 80 and Order 45 Rule 1 of the Civil Procedure Rules; that the application seeks to adopt an unknown procedure in law, raises no new and important matter or piece of evidence that could not be produced by the applicant prior to the judgement made on 18/7/2023; that no sufficient reasons have been advanced to warrant the court to review its judgement/order; that the evidence sought to be produced now does not constitute discovery of new evidence which after exercise of due diligence was not within the applicant's knowledge and could not have been produced at the time the judgement was made and therefore the annexures LOG 1 & LOG 2 (a), (b), (c), (d) and (e) are inadmissible. The respondent urged that there is no legal substance in the application warranting this court to entertain it.
4. Both parties filed their respective submissions which I have duly considered together with the application and the response thereto.
5. The applicant is asking this court to review and/or vary its judgement delivered on 18/7/2023. Order 45 Rules (1) and (2) of the Civil Procedure Rules gives the grounds in which upon application for review will be based as follows: - They are:-
 - a. A decree in which no appeal is allowed;
 - b. There is discovery of new and important matter which after exercise of due diligence was not within the applicant's knowledge;
 - c. There was a mistake or an apparent error on the face of the record;
 - d. There are other sufficient reasons;
 - e. The application must be made without unreasonable delay.
6. The judgement of this court dated 18/7/2023 issued the following orders:-
 - a. The appellant is hereby awarded a sum of Kshs. 300,000/= as damages for the illegal and unlawful repossession of his motor vehicle KAW 715M.
 - b. The appellant is hereby awarded a sum of Kshs. 150,000/= for the unlawful and illegal public embarrassment during the repossession of the suit motor vehicle.
 - c. The appellant is hereby awarded half the costs of the lower court suit and half the costs of this appeal.
 - d. Interest on the damages and costs to run from the date of this judgement.
7. As per the prayers in the applicant's application, the applicant seeks that the damages for the illegal and unlawful repossession of motor vehicle KAW 715M be varied from Kshs. 300,000/= to Kshs. 400,000/=. The reasons preferred by the applicant are that the motor vehicle was bought at Kshs. 380,000/= while the cost of transportation was Kshs. 20,000/= making a total of Kshs. 400,000/=. To support this, contention the applicant produced a sale agreement dated 2/8/2018.



8. I have perused the sale agreement being produced now (LOG 1). It is indeed true that the purchase price of the suit motor vehicle was agreed at Kshs. 380,000/=. The same agreement was filed at pages 144 - 148 of the Record of Appeal. However, the agreement as produced in the Record of Appeal has not been attested and/or witnessed by the parties involved in the transaction as opposed to the sale agreement which is now annexed to the applicant's application.
9. In addition, looking at the proceedings before the trial court and the exhibits produced by the applicant in support of his case, the instant sale agreement, which is being produced at this appeal, was not produced then. This court is only limited to review and the decision of the lower court. It cannot accept new evidence except with proper leave of the appellate court. In my view, this is new evidence which cannot come to the aid of the applicant.
10. In this court's judgement, I did observe that the prayer for the compensation of the sum of Kshs. 400,000/= by the applicant was not tenable since there was no valuation report. The only guiding factor was the estimated value which the auctioneers quoted for selling the motor vehicle. I reiterate that since the sale agreement was not produced in the lower court, the applicant cannot purport to rely on the same now. As for the prayer for the costs of transporting the suit motor vehicle from Mombasa, the same fate befalls it as no evidence was produced in the lower court to justify the same.
11. The applicant has not satisfied the prerequisites for grant of an order of review envisage under Order 45 Rules of the Civil Procedure Act. The upshot is that the application dated 16th August 2023 is devoid of merit. It is hereby dismissed with costs to the respondent,

DATED, DELIVERED AND SIGNED AT MIGORI THIS 25TH DAY OF APRIL, 2024

R. WENDOH

JUDGE

Ruling delivered in the presence of:-

No appearance for the Appellant

No appearance for the Respondent

Emma and Phelix Court Assistants

