



Kirimi v Ali (Civil Appeal E004 of 2024) [2025] KEHC 2748 (KLR) (12 March 2025) (Ruling)

Neutral citation: [2025] KEHC 2748 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MARSABIT**

CIVIL APPEAL E004 OF 2024

FR OLEL, J

MARCH 12, 2025

BETWEEN

EDWIN GITONGA KIRIMI APPELLANT

AND

HASSAN GOLICHA ALI RESPONDENT

RULING

A. Introduction

1. The Application before this court is the Notice of motion application dated 27th January 2025 brought pursuant to the provisions of Section 80 of the [Civil procedure Act](#) and Order 45 rule 1 of the [Civil procedure Rules](#). The Applicant seeks for orders that;
 - a. Spent.
 - b. This Honourable court be pleased to review and vary its judgment delivered on 03.01.2024
 - c. The award of general damages by the Honourable court be reviewed and replaced with an award for special damage's as pleaded and strictly proved by the Respondent/Applicant in the chief Magistrate's court.
 - d. The costs of this Application be provided for.
2. The Application is supported by the grounds on the face of the said application and the supporting affidavit of the Applicant/Respondent, Alphonse Hassan Golicha, who depones that he was the plaintiff in the primary suit and had sought damages special damages totaling to Kshs 117,881/= for destruction of his property. Upon hearing the primary suit, the trial Magistrate had awarded him special damage's as pleaded and proved, but the learned judge on Appeal had improperly adjudicated upon the same and failed to consider the detailed evidence of specific loss thus erroneously failed to award the same.



3. The Applicant further averred that this had created an apparent error on the face of the record, which was glaring and prejudicial to him and thus it was in the interest of justice to have the error corrected and the special damages earlier awarded be restored.
4. The application was opposed by the respondent, who filed his grounds of opposition dated 07.02.2025. He stated that the Applicant had not established sufficient grounds to enable the court review the earlier orders issues and if dissatisfied, the applicant should have preferred an Appeal to the superior court. To that extent, this review Application was grossly incompetent and prayed that the Application under consideration be dismissed with costs.

B. Analysis & Determination

5. I have carefully considered the Application and corresponding grounds of opposition made thereto. Section 80 of the [*Civil Procedure Act*](#) and Order 45 Rule 1 of the Civil Procedure summarize the circumstances/conditions under which orders for review may be issued and they include where the applicant shows:
 - a. discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or;
 - b. on account of some mistake or error apparent on the face of the record,
 - c. for any other sufficient reason desires to obtain a review of the decree or order may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.
6. The applicant seeks for review, based on what he consider's to be an error on the face of the record. The Court of Appeal had the following to say in an application for review, made under the said ground in the *National Bank of Kenya Ltd vs Ndungu Njau* (1997) eKLR.

“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 an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review
7. Also, In *Chandrakant Joshibhai Patel -v- R* [2004] TLR, 218 it was held that an error stated to be apparent on the face of the record:

“...must be such as can be seen by one who runs and reads, that is, an obvious and patent mistake and not something which can be established by a long-drawn process of reading on points on which may conceivably be two opinions.
8. In the plaint filed, the applicant pleaded for recovery of the cost/loss of the posho mill but did not specify the amount sought under the said heading. During proceedings in the primary suit, he did provide evidence quantifying the damage occasioned to the posho mill house in the sum of Kshs 272,986/=, which was awarded by the trial court, but on Appeal was set aside on the ground that it was not specifically pleaded.



9. What the Applicant is alleging is that the learned judge misconstrued the law and proceeded to base his finding on an incorrect exposition of the law.
10. This is a proper and valid question to be determined on further Appeal and not appropriate issue for the court to consider under its power of review, as it can only be established by a long-drawn process of counter-legal arguments advanced by each party.

Disposition

11. Considering all relevant factors, I do find that the Notice of Application dated 27.01.2025 lacks merit and the same is dismissed with no orders as to costs.
12. It is so ordered.

JUDGMENT WRITTEN, DATED AND SIGNED AT MARSABIT THIS 12TH DAY OF MARCH, 2025.

FRANCIS RAYOLA OLEL

JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, TEAMS THIS 12TH DAY OF MARCH, 2025.

In the presence of:

N/A for Appellant

N/A for Respondent

Mr. Jarso Court Assistant

