

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

CIVIL APPEAL NO. 60 OF 2017

RACHEL WAMBUI.....1ST APPELLANT

MARY NJERI.....2ND APPELLANT

ANN WAIRIMU.....3RD APPELLANT

VERSUS

LOUIS KAMBO.....RESPONDENT

RULING

1. It is trite that in order to obtain a review an applicant has to show to the satisfaction of the court that there has been discovery of new and important matter or evidence which was not within his knowledge or could not be produced at the time when the order to be reviewed was made; or that there was a mistake or error apparent on the face of the record; or that there is any other sufficient reason to enable review (**Tokesi Mambili & Others –v- Simion Litsanga, Civil Appeal No. 9 of 2001 at Kisumu**).

2. The appeal herein was on 15th November 2018 found to be incompetent. This was because, although filed on 1st September 2017, the appellants had not filed a record of appeal, and had not listed the matter for directions as required under **section 79B** of the **Civil Procedure Act** and **Order 45 rule 1** of the **Civil Procedure Rules**. Further, under **section 79G** of the **Act** the decree and order appealed from were not filed.

3. Secondly, on 17th July 2018 I directed the parties to, instead of spending time on the application, deal with the appeal by filing written submissions on the same within 14 days. The filing was to be simultaneous. On the day the orders were made the parties were represented. The appellants took no action to file the submissions. The appeal was mentioned on 27th September 2018 for highlighting of the submissions. The appellants had notice. They did not attend, and neither did their advocate.

4. In short, there is no material or basis upon which this court can exercise its discretion to recall and review the orders that were given on 15th November 2018 when the appeal was dismissed with costs. There is no evidence that has been presented. No error or mistake have been demonstrated.

5. The application is consequently dismissed with costs.

DATED and SIGNED at Nairobi this 19TH day of FEBRUARY 2019

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at Nairobi this 21ST day of FEBRUARY 2019

ALI-ARONI

JUDGE