



REPUBLIC OF KENYA



Matalanga t/a Rhemat Auctioneers v Auctioneers Licensing Board & another (Civil Appeal E769 of 2021) [2025] KEHC 12220 (KLR) (Appeals) (8 May 2025) (Ruling)

Neutral citation: [2025] KEHC 12220 (KLR)

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

APPEALS

CIVIL APPEAL E769 OF 2021

TW CHERERE, J

MAY 8, 2025

BETWEEN

HENRY SHISIA MATALANGA T/A RHEMAT AUCTIONEERS APPELLANT

AND

AUCTIONEERS LICENSING BOARD 1ST RESPONDENT

JOSHUA SINDIGA OMBOGI 2ND RESPONDENT

RULING

“A review is not a backdoor to reargue what has already been decided—it is a narrow window to correct what is plainly wrong.”

1. The Auctioneers Licensing Board by a judgment delivered on 28th October 2021 in Disciplinary Cause No. 50 of 2020 made the following orders against Henry Shisia Matalanga, the Appellant herein in favour of complainant (2nd Respondent herein):
 1. Return of all carted away goods or their value
 2. A fine of Kshs. 100,000;
 3. Costs to the complainant assessed at Kes. 100,000.
2. Aggrieved by the said decision, Appellant filed this appeal. By judgment delivered on 25th October 2024, this court dismissed the appeal, having found, among other things, that:
 1. The Board erred in finding that the Appellant evicted the Respondent from the premises
 2. The Board erred in finding there was no advertisement prior to the sale;



3. The Appellant sold unproclaimed goods belonging to the 2nd Respondent
3. By a notice of motion dated 06th December 2024, the Appellant seeks an order of review of the judgment of this Court delivered on 25th October 2024. The application is expressed to be brought under Article 159(2)(d) of *the Constitution*, Sections 1A, 1B, 3A and 80 of the *Civil Procedure Act*, and Order 45 Rule 1 of the *Civil Procedure Rules*.
4. The application is supported by the affidavit of the Appellant, sworn on 06th December 2024, and is based on the ground that there is an error apparent on the face of the record for the reason that the findings on eviction and advertisement in his favour ought to have resulted in the appeal being allowed.
5. The Respondents were duly served but did not respond to the application or attend the hearing. The Court, therefore, proceeds to determine the application on its merits, unopposed.
6. In his written submissions dated 02nd May 2025, the Appellant invokes Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the *Civil Procedure Rules*, which vest the Court with jurisdiction to review its decision on the basis of:
 1. the discovery of new and important evidence;
 2. an error apparent on the face of the record; or
 3. any other sufficient reason.
7. To support the ground of "other sufficient reason," the Appellant cites the Court of Appeal's decision in *Accredo AG v Stefano Polizzi* [2021] eKLR, where the Court held:

"Under sub-rule 1(b), an application for review may be made on the ground of some 'other sufficient reason'. The reason must be analogous to those specified in the rule and must be based on justice, equity and good conscience."
8. On the scope of what constitutes an error apparent on the face of the record, the Appellant relies on *Miguna Miguna v National Housing Corporation & Another* [2023] eKLR, in which the Court observed:

"As to what amounts to an error apparent on the face of the record, it must be an obvious and patent mistake, not something that requires a long-drawn process of reasoning on points on which there may conceivably be two opinions."
9. The Appellant also cites The Appellant also cited *Vincent v Langat & 5 Others; Omollo & 15 Others (Interested Parties)* [2023] KEHC 22471 (KLR) which addressed errors in the magistrate's finding regarding the interpretation of Article 177(1)(c) of *the Constitution* and not within the framework of review under Section 80 or Order 45.

Issues for Determination

10. I have considered the notice of motion in the light of the affidavit evidence as well as the submissions and list of authorities cited by the Appellant and I have identified the following issues for determination:
 1. Whether the application meets the threshold for review based on the judgment's findings
 2. Whether the Appellant is entitled to the orders sought



1. Whether the Application Meets the Threshold For Review

11. The governing law on review is found in Section 80 of the *Civil Procedure Act*, which provides that a court may review its judgment or order upon application by a person aggrieved:
 - a. by a decree or order from which no appeal has been preferred, or
 - b. by a decree or order from which an appeal is allowed but no appeal has been filed.
 - c. It further provides that review may be granted on account of discovery of new and important evidence, error apparent on the face of the record, or other sufficient reason.
12. Order 45 Rule 1 of the *Civil Procedure Rules* operationalizes Section 80 and requires that:
 1. The applicant must not have appealed;
 2. The application must be based on discovery of new and important matter that could not be produced with due diligence, or on an error apparent on the face of the record, or other sufficient reason;
 3. The application must be made without unreasonable delay.
13. In *National Bank of Kenya Ltd v Ndungu Njau* [1997] eKLR, the Court of Appeal held:

“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... A review is not an appeal in disguise.”
14. Similarly, in *Pancras T. Swai v Kenya Breweries Ltd* [2014] eKLR, the Court reiterated:

“The power of review is available only when there is an error apparent on the face of the record or discovery of new and important matter... and not merely because a party is unhappy with the decision.”
15. And in *Benjoh Amalgamated Ltd & Another v Kenya Commercial Bank Ltd* [2014] eKLR, citing *Niels Bruel v Moses Wachira & 2 Others* [2018] eKLR, the Court emphasized:

“Starting with the first prayer to re-open the appeal and review the judgment of this Court, it is axiomatic that this Court has jurisdiction to do so. But that jurisdiction is exceptional and has to be exercised sparingly and with circumspection to thwart disaffected parties who merely seek a second bite of the cherry or who invite the Court to sit on appeal from its own judgment.”
16. The Appellant contends that since the Court made findings in his favour on the issues of eviction and advertisement, the appeal ought to have succeeded. However, he has not identified any new evidence, nor pointed to an error apparent on the face of the record. What he raises are issues of interpretation and assessment of evidence, which are not grounds for review but for appeal.
17. Moreover, while the Court acknowledged errors on some points, it found that the Appellant sold unproclaimed goods—a serious infraction justifying the Board’s disciplinary action. This was sufficient to uphold the Board’s decision notwithstanding partial success on other issues.



18. The Court's findings were not contradictory and its conclusion was coherent. The argument advanced by the Appellant is an invitation to re-evaluate the merits of the decision, which falls outside the purview of review.

Disposition

19. Accordingly, I make the following orders:

1. The Notice of Motion dated 06th December 2024 is hereby dismissed.
2. Appellant will bear his own costs.
3. File Closed

It is so ordered.

DELIVERED AT NAIROBI THIS 08TH DAY OF MAY, 2025.

WAMAE T. W. CHERERE

JUDGE

Appearances

Court Assistant - Nyambala

For Appellant - Mr. Wafula for S. K. Oloo & Co. Advocates

For 1st Respondent - N/A

For 2nd Respondent - N/A for E. S. Ochieng & Co. Advocates

