



REPUBLIC OF KENYA



**Gekone v Embassava Sacco Society Limited (Civil Appeal E001 of 2023)
[2025] KEHC 12789 (KLR) (Civ) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12789 (KLR)

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

**CIVIL
CIVIL APPEAL E001 OF 2023**

**AC MRIMA, J
SEPTEMBER 18, 2025**

BETWEEN

JUSTUS NTABO GEKONE APPELLANT

AND

EMBASSAVA SACCO SOCIETY LIMITED RESPONDENT

RULING

Introduction

1. Dissatisfied with the judgment in this appeal delivered on 30th day of July 2024, the Appellant filed an application dated 13th February 2025 seeking the review of the said judgment.
2. The application was vehemently opposed and was eventually heard by way of written submissions, hence, this judgment.

The Application:

3. The application was brought under Articles 48, 49, 159 of the *Constitution* and Order 45 and 51 of the Civil Procedure Rules as read alongside section 1A, 1B, 3A and 80 of the *Civil Procedure Act*. It was supported by the Applicant's Affidavit deposed to on a similar date.
4. In the grounds and affidavit in support of the application, the Applicant stated that he was aggrieved by the judgment of 30th July 2024 and as such sought its review. It was his case that the Learned Judge was wrong and there was an apparent injustice. He deposed that the Judge was wrong in quoting the findings of the Tribunal instead of looking at evidence adduced in the appeal. He further stated that the Court failed to establish whether part of the principal loan was advanced to the client with illegal expenses and that he was being surcharged in the pretext of managing the motor vehicle KBS 246V.



5. He averred that the Court was misled in stating that he was entitled to self-preservation yet the repayment period for the loan had not lapsed and, therefore, the Respondent was not entitled to confiscate his share. He further claimed that the Court was misled in stating that the balance of the loan approved was paid to offset the balance in purchasing the motor vehicle KBS 246V yet there was no such balance existing and nether was there any evidence of payment of the loan. The Applicant claimed further that the Court was misled in stating that the Tribunal does not need to get an explanation on why the Sacco decided to recover through one of the methods and not the other yet the period of payment of the loan had not lapsed. He also claimed that the Court did not consider the fact that the Appellant did not receive the full amount of Kshs. 2,200,000/- loan as approved yet it went ahead and stated that the Appellant had not given an explanation on how the debt of Kshs. 2,200,000/- was cleared. It was his case that the Judge erred when he said that the Appellant had to give evidence of how the debt, he admitted was repaid, yet the Appellant did not at any point admit he received the total amount of Kshs. 2,200,000/-.
6. In his written submissions dated 7th May 2025, the Applicant stated that the application had been brought without undue delay and in good faith and that it will not occasion any prejudice on the part of the Respondent. Submitting on the merits of the review, it was his argument that section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules as appreciated alongside the decisions in the case of Pancras T. Swai -vs- Kenya Breweries Limited and Stephen Gathua Kimani -vs- Nancy Waruingi t/a Providence Auctioneers (2016) eKLR that this Court is conferred with an unfettered discretion to make such order as it thinks fit on review and that the omission of any qualifying words in the section was deliberate.
7. The Applicant further relied on the Supreme Court decision in Application No. 8 of 2017, Parliamentary Service Commission -vs- Martin Nyaga Wambora & Others (2018) eKLR where it was observed that: -

.... A review of exercise of discretion is not a matter of course to be undertaken in all decisions taken by a limited bench of this court. An Application for review of exercise of discretion is not an appeal or a chance for the Applicant to re-argue his/her application.
8. The Applicant rehashed the grounds in support of the application and stated that since no appeal lies to the Court of Appeal in relation to the dispute from the Tribunal, it was important for errors of the High Court to be reviewed. He further submitted that it was manifest from the decision as a whole that the Judge was wrong and as a result, there was an injustice.

The Respondent's case:

9. Embassava Sacco Society Limited opposed the application through the Replying Affidavit of its Secretary, Lukas Kyule, deposed to on 21st March 2025. It was his case that the application is an abuse of Court process in so far as it seeks to appeal the judgment of the Court through the back door. He stated that the application, as framed, does not meet the threshold for purposes of review as there was no mistake or any error apparent on the face of the record to call for a review. He deposed that the Applicant was rehearsing for fresh hearing of the appeal when the Court had pronounced itself on all the matters realised in the appeal.
10. Further to the foregoing, the Respondent deposed that the impugned judgment also compromised the judgment in Case No. 637 of 2021 as consolidated and the Applicant does not state which one, they seek review. It was his position that the Court has no jurisdiction to review its own judgment where the Court is seen to be wrong. The remedy lies in the appeal and not a review. He deposed further that



the Applicant had not demonstrated discovery of new and important matter which after the exercise due diligence could not be availed before Court.

11. He urged the Court to dismiss the application.
12. In its written submission dated 11th June 2025, the Respondent submitted that Order 45 of the Civil Procedure Rules as was interpreted by the Court in *EvanBwire -vs- Andrew Nginda* allows a Court to allow an application on very strong grounds particularly if its effect will amount to reopening the Application or the cause afresh. The Respondent submitted that the application had not raised any issue that passed the test for review. It asserted that there was no mistake, error apparent or any other reason which was obvious to the eye and which may require any interpretation to review.
13. The Respondent fortified its case by referring to the Court of Appeal decision in the case of *National Bank of Kenya -vs- Ndungu Njau* (1997) eKLR where it was observed that: -

.... 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...
14. In conclusion, it submitted that the judgment of this Court had no single issue that warranted review and urged that the application be dismissed with costs.

Analysis:

15. Section 80 of the *Civil Procedure Act* empowers the High Court to review its decree or orders as follows;
80. Any person who considers himself aggrieved-
 - (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
 - (b) by a decree or order from which no appeal is allowed by this Act,May apply for a review of judgement to the Court, which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.
16. Order 45 Rule 1 of the Civil Procedure Rules sets down the criteria for review applications as follows: -
 1. Application for review of decree or order:
 - (1) Any person considering himself aggrieved—
 - (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 - (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or 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.
 - (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the



ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.

17. Courts have severally dealt with the issue of review. The Supreme Court in Application No. 8 of 2017, Parliamentary Service Commission -vs- Martin Nyaga Wambora & others [2018] eKLR, quoted with approval the findings of the East Africa Court of Appeal in Mbogo and Another -vs- Shah [1968] EA, upon establishing the following principles: -

(31) Consequently, drawing from the case law above, particularly Mbogo and Another v Shah, we lay down the following as guiding principles for application(s) for review of a decision of the Court made in exercise of discretion as follows:

- i. A review of exercise of discretion is not as a matter of course to be undertaken in all decisions taken by a limited bench of this Court.
- ii. Review of exercise of discretion is not a right; but an equitable remedy which calls for a basis to be laid by the applicant to the satisfaction of the Court;
- iii. An application for review of exercise of discretion is not an appeal or a chance for the applicant to re-argue his/her application.
- iv. In an application for review of exercise of discretion, the applicant has to demonstrate, to the satisfaction of the Court, how the Court erred in the exercise of its discretion or exercised it whimsically.
- v. During such review application, in focus is the decision of the Court and not the merit of the substantive motion subject of the decision under review.
- vi. The applicant has to satisfactorily demonstrate that the judge(s) misdirected themselves in exercise discretion and:
 - a. as a result, a wrong decision was arrived at; or
 - b. it is manifest from the decision as a whole that the judge has been clearly wrong and as a result, there has been an apparent injustice.

18. The Court of Appeal in Civil Appeal No. 2111 of 1996, National Bank of Kenya vs. Ndungu Njau observed as follows in respect of reviews applications: -

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 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 proceeds on an incorrect expansion of the law.

19. The import of Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules was considered by the High Court in Miscellaneous Application 317 of 2018, Republic -vs- Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] eKLR. Upon considering comparative jurisprudence, the Court crystallized the principles for consideration in reviewing its own decisions as follows:

- i. A court can review its decision on either of the grounds enumerated in Order 45 Rule 1 and not otherwise.



- ii. The expression "any other sufficient reason" appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds.
 - iii. An error which is not self-evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of record justifying exercise of power under Section 80.
 - iv. An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
 - v. A decision/order cannot be reviewed under Section 80 on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.
 - vi. While considering an application for review, the court must confine its adjudication with reference to material, which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.
 - vii. Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.
 - viii. A mistake or an error apparent on the face of the record means a mistake or an error, which is prima-facie visible and does not require any detail examination. In the present case the petitioner has not been able to point out any error apparent on the face of the record.
 - ix. Section 80 of the Civil Procedure Code provides for a substantive power of review by a civil court and consequently by the appellate courts. The words occurring in Section 80 mean subject to such conditions and limitations as may be prescribed thereof and for the said purpose, the procedural conditions contained in Order 45 Rule 1 must be taken into consideration. Section 80 of the Civil Procedure Code does not prescribe any limitation on the power of the court, but such limitations have been provided for in Order 45 Rule 1.
 - x. The power of a civil court to review its judgment/decision is traceable in Section 80 CPC. The grounds on which review can be sought are enumerated in Order 45 Rule 1.
20. Having set out the law and the guiding legal principles in review applications, this Court will now consider the application on the basis of the said parameters. The Applicant went to a great extent in alluding how the Court made wrong findings in respect of the monies borrowed and the illegal charges thereto. However, the Applicant neither pointed out any error apparent or any mistake on the face of the record nor adduced any new evidence as the grounds in support to the application.
21. The contention that the Court arrived at wrong findings as it was misled on the loan repayments and the allegation that the Applicant did not receive full payment of the loan of Kshs. 2,200,000/- are by no means assertions of errors or mistakes apparent on the face of the record. They also do not form new evidence. Such contentions were issues that were hotly canvassed by the parties and decided upon by this Court in the judgment. The issues are not self-evident errors or mistakes and cannot even fall under the expression 'any other sufficient reason' as provided by Order 45 Rule 1(b).
22. Inevitably, the Applicant fails the test for review as he failed to bring himself within the bounds anticipated by Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules.



Disposition:

23. In the premises, the application is unmerited and the following final orders hereby issue: -

- (a) The Notice of Motion dated 13th February 2025 is hereby dismissed with costs.
- (b) The order of stay of execution of the judgment and decree issued on 20th February 2025 is hereby set aside and discharged accordingly.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 18TH DAY OF SEPTEMBER, 2025.

A. C. MRIMA

JUDGE

Ruling virtually delivered in the presence of:

Akhandi, Learned Counsel for the Appellant.

Mr. Getange, Learned Counsel for the Respondent.

Michael/Amina – Court Assistants.

