



**Mbae (Suing as the Legal Representative of the Estate of Koome Mbae – Deceased) v  
Mugambi (Sued as the Legal Representative of the Estate of Duncan Mwega Micheni –  
Deceased) (Civil Appeal E019 of 2022) [2024] KEHC 12189 (KLR) (4 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12189 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
CIVIL APPEAL E019 OF 2022  
LW GITARI, J  
OCTOBER 4, 2024**

**BETWEEN**

**MARTIN DOPORRES MBAE ..... APPELLANT  
SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF KOOME  
MBAE – DECEASED**

**AND**

**BENJAMIN MICHENI MUGAMBI ..... RESPONDENT  
SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF DUNCAN  
MWEGA MICHENI – DECEASED**

**RULING**

- 1 The matter that is pending before this court is a Notice of Motion dated 25/06/2024 brought under Article 50(1) of the Constitution of Kenya 2010 and Section 80, 1A and 1B of the *Civil Procedure Act* and Orders 45 Rule 1 Civil Procedure Rules and seeks orders that the court be pleased to review or revise its own orders on dependency 1/3 ratio on the Judgment delivered on 4/4/2024.
- 2 That the court be pleased to apply dependency ratio of 2/3.
- 3 That costs be provided for.
- 4 It is based on the ground that the Judgment upheld the decision of the trial court on dependency ratio of 2/3 but applied a dependency ratio of 1/3 during computation.
- 5 That the computation and the application was an error or mistake on the face of the record which the applicant seeks to review.



6 The application is supported by the affidavit of Kijaru M. Benson and he depones that the judgment of this Court at paragraph 33 had held that;

“The trial magistrate did not error to find that the deceased could have worked for another 30 (thirty) years or more. The magistrate further considered the evidence placed before it and in the circumstances of this case a dependency ratio of 2/3 was proper.

In my view the trial court considered the correct legal principles before it used the said multiplier and dependency ratio.”

7 That this court applied 1/3 against its own finding.

8 That the dependency ratio should apply in the circumstances.

9 The respondent opposed the application and filed a replying affidavit sworn by Lilian Wambui Macatha. Her contention is that the court having made its considered analysis and determination came to the conclusion that the respondent in the trial court failed to prove that Brenda Kinya was a dependant of the deceased. That the court was of the opinion that the deceased had one beneficiary as per the letter by the Chief of Iruma Location. That court held that the claim was brought on the benefit of the father of the deceased and awarded a dependency ratio of 1/3. That the judgment was logically analyzed and allowing the review of the judgment would defeat the objective of the appeal because the outcome of the judgment would still be inordinately high.

10 I have considered the application.

Section 80 of the [Civil Procedure Act](#) provides;

- “ 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 judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

11 This is buttressed by Order 45 rule 1 of the Civil Procedure Rules which provides as follows:

“[Order 45, rule 1.] Application for review of decree or order. 1.

- (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.”

12 The issue which this court has to determine is:

### **1. Whether there is an error apparent on the face of the record.**

13 Under Order 45 of the Civil Procedure Rules the court has discretion to review its judgment based on the grounds stated in the order and rule. This was considered in the case of Republic –V- Advocates Disciplinary Tribunal Ex Parte Appollo Mboya (2019) eKLR High Court of Kenya Nairobi, Judicial Review Division Misc. Application No. 317/2018 where Mativo Judge (as he then was) stated:

1. A court can review its own decision on either or the grounds enumerated under Order 45 Rule 1 and not otherwise.
2. ....
3. An error which can be discovered by a long process of reasoning cannot be treated as error apparent on the face of the record justifying the exercise of power under Section 80.
4. 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 or examination...”

14 The applicant contends that there is an error apparent on the face of the judgment. Order 45 talks of review of decree or order. An applicant in an application for review ought to annex a formal extracted decree or order in respect of which the review is sought.

15 In Suleiman Murunga –Vs- Nilestar Holdings Limited & Another (2015) eKLR, the court held that

The plain reading of the above provision (Order 45 rule -1-) is that an applicant for review ought to have annexed a formal extracted decree or order in respect of which review is sought. In essence the judgment or ruling. Thus where an applicant fails to annex the order sought to be reviewed an application is defective.”

16 The applicant has not annexed the judgment to the application. An application for review will only be allowed on strong ground particularly if its effect will amount to re-opening of the case or substantially alter the order or the decree. The alleged mistake or error apparent on the face of the record means a mistake or an error which is so obvious and does not require any detail examination.

17 In this case the applicant has stated that the court upheld the decision of the trial court on dependency ratio but applied a dependency ratio of 1/3.

18 The decision of the court was that the learned trial magistrate had considered the evidence placed before him and in the circumstanced a dependency ratio was proper. However the court proceeded to consider other grounds of appeal. The court gave reason at paragraph 35 for adopting the ratio of 1/3. It is trite that the 1<sup>st</sup> appellate is not bound to uphold the decision of the learned magistrate, it must make its own finding. The court gave reason for applying the ratio of 1/3. There is no error apparent on the



face of the record. The threshold in determining an error is that it must be a mistake which is prima facie visible without requiring any detail examination.

- 19 The alleged error does not meet this threshold. I find that there is no error apparent on the face of the record requiring a review of the judgment. The application is without merits and is dismissed with costs.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 4<sup>TH</sup> DAY OF OCTOBER 2024.**

**L.W. GITARI**

**JUDGE**

