



REPUBLIC OF KENYA



KENYA LAW
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**Gumba v Faulu Micro-Finance (Civil Appeal E093 of 2022)
[2025] KEHC 13983 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13983 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CIVIL APPEAL E093 OF 2022
A. ONG'INJO, J
SEPTEMBER 25, 2025**

BETWEEN

LEONARD OKUMU GUMBA APPELLANT

AND

FAULU MICRO-FINANCE RESPONDENT

*(Being an appeal from the judgment and decree of Hon. Dickson Onyango
(CM) delivered on 4 TH July 2022 at Migori CMCCC No. 1 of 2022)*

RULING

1. By Notice of Motion application dated 1st April 2025 the Applicant pursuant to Section 3 and 3A of the *Civil Procedure Act* and Order 45 Rule 1 and 2 and Order 51 of the Civil Procedure Rules sought that the court grants leave for filing of an application for review out of time and that the court be pleased to review its orders issued in the judgement delivered on 18th July 2023 awarding him Kshs. 100,000/= being the remainder as damages for illegal and unlawful possession of the motor vehicle KAW 715 M.
2. The Applicant also sought that the court issues an order for adoption of new evidence in relation to the Respondent's document in page 109 of the ROA and assess damages for loss of income to the tune of Kshs. 3,883,840/= per annum from the time of repossession of the motor vehicle KAW715M.
3. The Applicant also sought for costs of the application to be awarded to him.
4. The application was supported with the grounds on its face and the affidavit sworn by the Applicant on even date.
5. Directions were taken on 4th June 2025 for hearing of the application by way of written submissions.
6. The Applicants submissions are dated 9th May 2025 and are to the effect that delay in filing application for review was occasioned by the disappearance of a crucial witness one Barack Odhiambo Oguba who



was hidden by the Respondent and who the Applicant alleges he is now aware of his whereabouts and he even contacted the police as per an annexed OB. He said that the said witness now works with Family Bank Migori.

7. The Applicant submitted further that after judgement was delivered on 18th July 2023 he fell sick and bedridden. He said he was aggrieved by the said judgement because the Respondent's witness did not come to court to produce guarantor documents which could have enabled the court to properly assess the damages he suffered from the time the subject motor vehicle was repossessed.
8. The Applicant sought that the court causes the said document produced by the author to enable it review its judgement and award damages for loss of income as per the said document.
9. The Applicant relied on the case of Khalif Sheikh Adan Vs Attorney General [2019] eKLR and the holding in Registered Trustees of the Archdiocese of Dar Es Salaam Vs The Chairman Bunju Village Government & Others to support his application for leave to file application for review out of time.
10. The Respondent's Advocate filed submissions dated 30th May 2025 in which it was submitted that the application was opposed as it was an appeal disguised as application for review of the judgement of the court.
11. It was submitted that the import of Section 80 of the *Civil Procedure Act* and Order 45 of the Rules was considered in Milimani High Court Misc. Application No. 317 of 2018, Republic Vs Advocates Disciplinary Tribunal Ex Parte Apollo Mboya where it was held:

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

The expression "any other sufficient reason" appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds.

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.

An erroneous order/decision cannot be corrected in the guise of exercise of power of review. 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.

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.

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.

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.

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.

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”.

12. The Respondent submitted that the Applicant’s application does not meet the threshold for the court’s exercise of its discretionary powers as provided by Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules.
13. It was further submitted that the application being filed 21 months after delivery of judgement is affected by laches and it has not been shown that the Applicant acted with due diligence and the existence of the evidence was in his knowledge.
14. The Respondent argued that the Applicant had not offered cogent reasons for the unreasonable delay when it is shown when he had knowledge of the existence of the new evidence stated to be ‘guarantor information’ sought to be introduced after the court rendered its decision. The court was urged to find that the information sought to be adduced is not new as it had been alluded to by parties in their pleadings on record.
15. The Respondent submitted that the Applicant was asking the court to sit as an appellate court on its own judgement by urging it to reverse its erroneous judgement delivered on 18th July 2018. The Respondent submitted that if the Applicant is aggrieved by the decision of the court he should have proffered an appeal as the court is functus officio.
16. It was further submitted that the power to review can be exercised to correct mistake and not substitute a view and the provisions for enlargement of time are in Section 95 of the *Civil Procedure Act*. The Respondent brought it to the attention of the court that the Applicant’s application dated 16th August 2023 which was similar to the current one was dismissed and he cannot purport to bring another one.
17. The court was urged to dismiss the application.

Analysis and Determination

18. From the application, the supporting affidavit, the Replying affidavit and submissions, the following issues arise for determination:
 1. Whether this court has jurisdiction to enlarge time to permit filing of an application for review 21 months after judgment.
 2. Whether the Applicant has demonstrated sufficient cause for the delay.
 3. Whether the Applicant’s grounds meet the threshold for review under Section 80 CPA and Order 45 CPR.
 4. Whether the application amounts to an appeal disguised as review.
Section 80 *Civil Procedure Act* and Order 45 Rule 1 CPR provide for review of decrees or orders where:
 - i. There is discovery of new and important matter or evidence which, after exercise of due diligence, was not within the knowledge of the applicant;
 - ii. There is an error apparent on the face of the record; or
 - iii. There is any other sufficient reason.



Section 95 CPA and Order 50 Rule 6 CPR grant the court discretion to enlarge time for doing any act, even after expiry of the prescribed period.

19. The principles governing extension of time were settled in the Supreme Court of Kenya decision in: Barclays Bank of Kenya Limited vs. Commissioner of Domestic Taxes – where it was held that:
 1. Extension of time was not a right of a party. It was an equitable remedy that was only available to a deserving party at the discretion of the court;
 2. A party who sought for extension of time had the burden of laying a basis to the satisfaction of the court;
 3. Whether the court should exercise the discretion to extend time, was a consideration to be made on a case-to-case basis;
 4. Whether there was a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
 5. Whether there would be any prejudice suffered by the respondents if the extension was granted;
 6. Whether the application had been brought without undue delay; and
 7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.
20. In *Pancras T. Swai v Kenya Breweries Ltd* [2014] eKLR and in *Republic v Advocates Disciplinary Tribunal Ex Parte Apollo Mboya* [2019] eKLR, it was held that review cannot be used as an appeal in disguise and that the jurisdiction is narrow.
21. The judgment the Applicant seeks to be reviewed was delivered on 18th July 2023. The present application was filed on 1st April 2025, almost 21 months later. The Applicant attributes the delay to two factors illness and being bedridden after judgment and disappearance of a crucial witness, one Barack Odhiambo Oguba, who allegedly resurfaced recently.
22. However, there is no credible medical records annexed to demonstrate that the Applicant was not only sick but that he had prolonged incapacity. Regarding the witness, the guarantor documents were already in issue during trial. The Applicant has not shown that with due diligence he could not have procured the evidence earlier. In any case the said witness was listed by the Respondent as their witness and the Applicant could not force them to put their witness on the stand to prove his case. The Applicant had the opportunity to tender evidence to prove his case and the Respondents had no onus to assist him prove his claim against them.
23. The delay is on the part of the Applicant is unexplained and inordinate.
24. On whether the Applicant has satisfied the court that there is new evidence to warrant grant of the orders sought the new evidence must not have been within the applicant’s knowledge and must have been undiscoverable with due diligence. Here, the guarantor’s role and documents were pleaded and alluded to at trial. The Applicant therefore knew of their existence.
25. In *Apollo Mboya* case (*supra*), the court held that mere discovery of evidence is insufficient unless the Applicant demonstrates why it could not be obtained earlier with diligence. The Applicant has also failed this test.
26. As argued by the Respondent in their submissions the Applicant is essentially asking the court to reassess damages for loss of income and adoption new evidence in a matter which the court adjudicated



upon in its jurisdiction as an appellate court. This amounts to re-litigating the matter and inviting the court to sit on appeal over its own decision.

27. The Court of Appeal in *Pancras T. Swai v Kenya Breweries Ltd* (supra) cautioned that review jurisdiction should not be used to enable a court to rehear and correct its own decision. Dissatisfaction with judgment is a ground for appeal, not review.
28. Further, the Respondent demonstrated that the Applicant previously filed a similar application dated 16th August 2023 which was dismissed. The present application is therefore an abuse of process and the court is functus officio.
29. Accordingly, the application dated 1st April 2025 is dismissed with costs to the Respondent.
30. It is so ordered.

DATED, SIGNED AND DELIVERED AT MIGORI THIS 25th DAY OF SEPTEMBER, 2025.

HON. ANNE C. A. A. ONG'INJO

JUDGE

In The Presence of

