



**Magiri v Kamau (Civil Appeal E418 of 2022)
[2025] KEHC 13417 (KLR) (Civ) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13417 (KLR)

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

CIVIL

CIVIL APPEAL E418 OF 2022

AC MRIMA, J

SEPTEMBER 30, 2025

BETWEEN

DENNIS MUTWIRI MAGIRI APPELLANT

AND

JOSEPH KAMAU RESPONDENT

RULING

1. This is a ruling on the Notice of Motion dated 19th December 2024. The application seeks to review the judgment of this Court dated 27th September 2024 [hereinafter referred to as ‘the impugned judgment’] which was delivered by Hon. Lady Justice R. E. Ougo.
2. The main reason for seeking the review as can be drawn from the grounds on the face of the application and the supporting affidavit sworn on 19th December 2024 by the Applicant’s Counsel one Mr. Ichaura Wachira, was that the Court erroneously held that the Applicant only filed a List of Documents in support of the injuries sustained, but did not produce the documents in support of the injuries. The Applicant sees that as a mistake since he alleged to have filed all the documents listed and that the same were relied upon by the trial Court in assessing the damages payable. Additionally, the Applicant admitted that while filing the Record of Appeal, he omitted to include the said documents in the List of Documents despite them appearing in the filed List of documents dated 22nd January 2021.
3. The application was opposed by the Respondent through a Replying Affidavit sworn on 5th March 2025 by the Appellant’s Counsel one William Kipkorir Arusei. Parties filed written submissions in support of their respective cases, hence, this ruling.
4. The power of review in the High Court is anchored under Section 80 of the *Civil Procedure Act* Cap.21 and Order 45 of the Civil Procedure Rules, 2010. Section 80 of the Act provides as follows: -



80. Any person who considers himself aggrieved-
- (a) 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.
5. Further, Order 45 of the Civil Procedure Rules provides as follows: -
- 45.
- 1(1) Any person considering himself aggrieved-
- (a) 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 reasons, desires to obtain a review of the decree or order may apply for a review of judgment to the court which pass the decree or made the order without unreasonable delay.
6. Courts have severally rendered on this subject such that the applicable principles are well settled. For instance, the Supreme Court in *Parliamentary Service Commission V Martin Nyaga Wambora & Others* [2018] eKLR, quoted with approval the findings of the East Africa Court of Appeal in *Mbogo and Another v Shah* [1968] EA, on the issue of review as follows: -
- (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.

7. Additionally, the Court of Appeal in *National Bank of Kenya V Ndungu Njau* (Civil Appeal 2111 of 1996) held thus: -

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.

8. While analyzing the import of Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules, the High Court in *Republic v Advocates Disciplinary Tribunal ex parte Apollo Mboya* (2019) eKLR 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 CPC 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 CPC 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.
9. Behind the above legal background comes a consideration of the application. As stated earlier, the Applicant contended that the Court was mistaken in finding that he had not filed his documents in support of the injuries he sustained whereas he had done so, but did not make them part of the Record of Appeal.
10. Having carefully considered the impugned judgment, the reason why the Applicant's [who was the Plaintiff in the primary suit and the Respondent in this appeal] case was disallowed was captured in paragraph 12 as follows: -
12. What were the injuries proved by the Respondent [now Applicant]? The Plaintiff did not testify at the lower court as to the injuries sustained. Although the respondent list of documents dated 22/1/2021 listed a copy of the P3 Form, discharge summary from Kenyatta National Hospital and Report by Dr. G. K. Mwaura, all these documents were not filed. The injuries sustained by the respondent were not proved. The only document filed by the respondent as a demand letter.
11. The Appellate Court, therefore, made its findings on the manner in which the evidence was unveiled at the trial Court. The Court noted that despite the Applicant not testifying, he also did not produce his documents in support, and further that the documents were not part of the record. As such, even if this Court is to find that the documents were then on record, still that finding will not suffice in upsetting the impugned judgment which found that Applicant failed to testify. To this Court, that is a challenge which goes to the merit of the decision and ought to be taken up on appeal. The issue transcends the boundaries of a review application as it deals with the merits of the impugned judgment. This Court has to find, which it hereby does, that the review application lacks merit.
12. In the end, the following final orders hereby issue: -
- (a) The Notice of Motion dated 19th December 2024 be and is hereby dismissed.
- (b) The Respondent shall bear the costs of the application.
- Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF SEPTEMBER, 2025.

A. C. MRIMA

JUDGE

Ruling virtually delivered in the presence of:

Mr. Kiptanui, Learned Counsel for the Respondent.

Michael/Amina – Court Assistants.

