



Kimeto & Associates Advocates v Peter & another; Magodo (Applicant) (Miscellaneous Application E159 of 2024) [2025] KEHC 14550 (KLR) (Family) (16 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14550 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E159 OF 2024
PM NYAUNDI, J
OCTOBER 16, 2025**

BETWEEN

KIMETO & ASSOCIATES ADVOCATES ADVOCATE

AND

GLADYS NEKESA PETER 1ST CLIENT

KNIGHT MUHONJA MAGOGO 2ND CLIENT

AND

ALICE INGAIZA MAGODO APPLICANT

RULING

1. By the Chamber Summons dated 13th March 2025 presented under Rules 49,63 and 73 of the Probate and Administration Rules,1980, Order 45 of the Civil Procedure Rules, 2010 the applicant seeks the following orders;
 1. Spent.
 2. Spent
 3. That the Honourable Court be pleased to review and set aside the judgment Orders made on 7th March 2025
 4. That upon granting prayer (3) above, the Honourable Court be pleased to allow application dated 2nd September 2024 and remit the Bill of Costs dated 1st August 2024 for re-taxation by another taxing officer other than Honourable Lesootia (Deputy Registrar)
 5. That costs of this application be provided for.



2. The Applicant herein seeks a review of the judgment on account of what she perceives as an error on the face of the record. Specifically, she avers that in failing to consider her further affidavit the Court erred in failing to find that she was in fact a co Administrator of the Estate and further that M/s Anthony Musili & Company Advocates were not properly on record for the respondents herein.
3. I have considered the application, the response thereto and submissions filed herein. The issue for determination is whether the applicant herein can challenge a client/ advocate bill of costs between the Advocate herein and the respondents. I do not find that material has been placed before me to review my judgment. The respondents have not challenged the representation of the firm of Advocates.
4. The legal principles that guide courts in considering an application for review are those set out under Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules
5. In Republic -vs-Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] eKLR the Court set out the principles to consider in the review of its own decisions. It stated;
 - 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.



6. Further in *Nyamogo & Nyamogo v Kogo* (2001) EA 170 the Court discussed what would constitute a long-drawn process. It observed as follows;

.... An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of un definitiveness inherent in its very nature and it must be determined judicially on the facts of each case. There is a real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was possible. Mere error or wrong view is certainly no ground for review though it may be one for appeal.

7. I appreciate that the effect of the Consent executed is that the amount of Kshs 16, 886, 656 is a liability of the Estate. The question as to whether the respondents could bind the estate to pay the sum will be the subject of separate proceedings and not the reference.
8. Once the Advocate/ Applicant lodges her claim against the Estate the Applicant herein can challenge that claim and raise issue then as to whether the respondents could commit the estate in the manner that they did in the consent filed resolving the taxation.
9. In the circumstances the Summons is dismissed, the Applicant will pay costs assessed at Kshs 25,000 within 30 days from the date hereof.

DATED, SIGNED AND DELIVERED ON THE VIRTUAL PLATFORM, AT NAIROBI THIS 16th DAY OF OCTOBER, 2025.

P.M. NYAUNDI

JUDGE

In presence of:

Fardosa Court Assistant

Kimeto for Respondent

Moshe holding brief for Kiprop for Applicant

