



**Thuku v Paul (Civil Appeal E004 of 2024)
[2025] KEHC 15773 (KLR) (5 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 15773 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CIVIL APPEAL E004 OF 2024
KW KIARIE, J
NOVEMBER 5, 2025**

BETWEEN

BERNARD MWAURA THUKU APPELLANT

AND

DENNIS MUSYOKI PAUL RESPONDENT

*(Being an Appeal from the ruling in Makindu Senior Principal Magistrate's
SPMCC No. E043 of 2020 by Hon. M.W. Kibe–Senior Resident Magistrate)*

JUDGMENT

1. On the 31st day of January 2024, the learned magistrate delivered a ruling in respect of an application by the appellant dated the 7th day of December 2023. In the application before the trial court, he was seeking a review of the judgment, among other orders.
2. In the ruling, the learned trial magistrate declined to review the judgment. The appellant was aggrieved by the said ruling and filed this appeal through the firm of Kimani Charagu & Company Advocates. The following grounds of appeal were raised:
 - a. The learned magistrate erred in making a finding that the Appeal Court best deals with the issues raised in the appellant's application dated 7th December 2023.
 - b. The learned magistrate erred in failing to realize that the grounds upon which the said application was made were that there was new evidence which was not brought to the court at the hearing of the main suit.
 - c. The learned magistrate erred in making a finding that the court was being tasked to sit on appeal in respect of the judgment of Hon. J D Karani dated 4th October 2023.



- d. The learned magistrate erred in making a finding that the 2nd defendant in the lower Court ought to have appealed if dissatisfied with the judgment of the trial Court, yet the 2nd defendant clearly stated in his affidavit that he was not served with the pleadings, was not notified of the suit, or involved in the proceedings thereon.
 - e. The learned magistrate erred in making a finding that whether it was motor vehicle KBW 339Q or KBW 338Q involved in the accident is not a new issue. Yet, the issue of the correct motor vehicle only arose in connection with the appellant's application.
 - f. The learned magistrate erred in failing to make a finding that the appellant herein never participated in proceedings and was therefore not a party to the submission filed herein.
 - g. The learned magistrate erred in finding that the 2nd defendant failed to enjoin the motor vehicle KBW 339Q, yet he was not aware of the existence of the case until his property was attached.
 - h. The learned magistrate erred in refusing to allow the application for review, whereas it was properly before the said court, and enough grounds had been demonstrated to warrant a review of the judgment.
3. The respondent opposed the appeal through the firm of Asmatullah Robert & Company Advocates.
 4. This Court is the first appellate court. I am aware of my duty to evaluate the entire evidence on record, bearing in mind that I had no advantage of seeing the witnesses testify and watching their demeanour. I will be guided by the pronouncements in the case of *Selle vs Associated Motor Boat Co. Ltd.* [1965] E.A. 123, where it was held that the first appellate court has to reconsider and evaluate the evidence that was tendered before the trial court, assess it and make its own conclusions in the matter.
 5. The review process is governed by Order 45 of the Civil Procedure Rules. It states:
 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.
 6. The learned magistrate erred by stating that entertaining the application for review was equivalent to sitting on appeal against his colleagues' decision. He was obliged to review the application in accordance with the guidance provided in Order 45 of the Civil Procedure Rules and to assess its merit. I therefore set aside the impugned ruling. The appellant is free to present his application before a judicial officer of competent jurisdiction at Makindu Law Courts.
 7. Each party to bear its own costs.



DELIVERED AND SIGNED AT MAKUENI, THIS 5TH DAY OF NOVEMBER 2025

KIARIE WAWERU KIARIE

JUDGE

