



REPUBLIC OF KENYA



**KENYA LAW**

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**Mbua t/a Mbugua Nganga & Company Advocates v Co-operative Bank of Kenya (Petition E003 of 2023) [2025] KEHC 17230 (KLR) (Commercial and Tax) (20 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17230 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)**  
**COMMERCIAL AND TAX**  
**PETITION E003 OF 2023**  
**PM MULWA, J**  
**NOVEMBER 20, 2025**

**BETWEEN**

**GEORGE NGANGA MBUA T/A MBUGUA NGANGA & COMPANY**  
**ADVOCATES ..... PETITIONER**

**AND**

**CO-OPERATIVE BANK OF KENYA ..... RESPONDENT**

**RULING**

1. Before this Court for determination is the Petitioner's Notice of Motion dated 26<sup>th</sup> March 2025 brought under Section 80 of the *Civil Procedure Act*, Order 45 Rule 1 of the Civil Procedure Rules, and all other enabling provisions of the law. The Petitioner seeks orders to review and/or vary the judgment delivered on 13<sup>th</sup> March 2025, to set aside the entire decision dismissing the Petition, and to substitute it with a decision allowing the Petition, with costs to the Respondent.
2. The application is premised on the grounds set out on the face of the Motion and supported by the affidavit of the Petitioner. He contends that there exists an error apparent on the face of the record, arguing that the Court erroneously found that the Petitioner failed to produce the engagement letter dated 23<sup>rd</sup> February 2021, allegedly signed by the County Secretary, Murang'a. It is asserted that the said document, referred to interchangeably as a letter of engagement, had been furnished to the Court via emails dated 19<sup>th</sup> October 2023, and therefore, the Court overlooked material evidence. He maintains that there is sufficient cause for review and that no appeal has been filed against the impugned judgment.
3. The application is opposed. The Respondent, through a replying affidavit sworn on 21<sup>st</sup> May 2025 by Jackson Oire, its Legal Officer, contends that the Applicant has failed to satisfy the strict threshold for review. It is deposed that the judgment is well-reasoned and considers all the documents on record.



The Respondent further points out that the Petitioner filed a Notice of Appeal dated 19<sup>th</sup> March 2025, demonstrating an intention to challenge the judgment in the Court of Appeal, and thus disentitling him from seeking review. The Respondent asserts that the letter dated 23<sup>rd</sup> February 2021 is not an engagement letter but merely a forwarding letter and therefore does not constitute proof of contractual engagement.

4. The application was canvassed through written submissions. The Petitioner's submissions are dated 12<sup>th</sup> June 2025, while those of the Respondent are dated 2<sup>nd</sup> July 2025. The Court has considered both.
5. I have considered the application, the affidavits in support and against and the written submissions by both parties. The judgment sought to be reviewed was delivered by this court on 13<sup>th</sup> March 2025 wherein I dismissed the Petition filed and found that the Petitioner failed to adduce a copy of the engagement letter as requested by the Respondent. Aggrieved by that finding, the Petitioner now seeks review on the ground that there is an error apparent on the face of the record. The issue for determination is therefore whether this Court should review or vary its judgment delivered on 13<sup>th</sup> March 2025.
6. The guiding principles as envisaged in Section 80 of the *Civil Procedure Act*, and Order 45 of the Civil Procedure Rules 2010. Section 80 of the *Civil Procedure Act* states as follows:

“ 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.”

7. Order 45(1) of the Civil Procedure Rules also states thus:

“(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 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”

8. A clear reading of the above provisions shows that Section 80 gives the power of review, while Order 45 sets out the rules. The rules restrict the grounds for review. They lay down the jurisdiction and scope of review. They limit review to the following grounds
- (a) discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or;



- (b) on account of some mistake or error apparent on the face of the record, or
  - (c) for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without un reasonable delay.
9. The Petitioner argues that there is an error apparent on the face of the record because the Court held that he had failed to adduce a copy of the engagement letter, whereas the same was allegedly furnished via email dated 19<sup>th</sup> October 2023 and annexed as annexure 15 in his further affidavit.
  10. It is settled law that a review may be granted where it is necessary to correct an apparent error or omission on the part of the Court. The error or omission must be self-evident, requiring no elaborate argument to establish. It is not a ground for review that another Judge may have taken a different view, nor that the Court may have proceeded on a misinterpretation of the law. Misconstruing a statutory provision does not, in itself, constitute an error apparent on the face of the record.
  11. A review is not an appeal in disguise, nor is it a platform to re-argue issues already determined. In *Pancras T. Swai v Kenya Breweries Ltd* [2014] eKLR, the Supreme Court stressed that review is not intended to correct a Judge’s interpretation of the law or re-evaluation of evidence. It is a narrow remedy reserved only for glaring and obvious errors.
  12. The term “mistake or error apparent” signifies an error that is so obvious that it can be identified from the record without detailed scrutiny or debatable interpretation. Where detection of the alleged error requires lengthy reasoning or analysis, then it does not qualify as an error apparent under Section 80 of the Act or Order 45 Rule 1.
  13. In the present case, I am not persuaded that the Petitioner has demonstrated such an error. The Petitioner asserts that the letter dated 23<sup>rd</sup> February 2021 is the engagement letter, while the Respondent insists it is merely a forwarding letter. This dispute clearly calls for interpretation and evaluation of evidence, which cannot be resolved without argument. The complaint is therefore not about a self-evident mistake but rather about the Court’s factual finding, an issue appropriate for appeal, not review.
  14. Review cannot be granted in the absence of a glaring omission, a patent error, or other extraordinary circumstance. An error that must be established through an extended reasoning process, particularly in matters where two opinions are possible, does not qualify as an error apparent on the face of the record.
  15. In view of the foregoing, I find that the grounds advanced by the Applicant do not fall within the limited scope of review permitted by law. This is therefore not a proper case for the Court to exercise its discretionary power in favour of review. Accordingly, the Petitioner’s Notice of Motion dated 26<sup>th</sup> March 2025 is hereby dismissed, with no order as to costs.

Orders accordingly.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 20<sup>TH</sup> DAY OF NOVEMBER 2025.**

**P.M. MULWA**

**JUDGE**

In the presence of:

Mr. Kamau for Petitioner/Applicant

Mr. Muchiri h/b for Mr. Wanga for Respondent



Court Assistant: Carlos

