



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muyoma v Kaburu (Civil Appeal E556 of 2023)  
[2025] KEHC 17025 (KLR) (Civ) (12 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17025 (KLR)

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

**CIVIL**

**CIVIL APPEAL E556 OF 2023**

**AC MRIMA, J**

**NOVEMBER 12, 2025**

**BETWEEN**

**NANCY IMINZA MUYOMA ..... APPLICANT**

**AND**

**MECHEMI CHARLES KABURU ..... RESPONDENT**

**RULING**

1. The application subject of this ruling is the Notice of Motion dated 28<sup>th</sup> February 2025. The application seeks to review the judgment rendered on 14<sup>th</sup> October 2024 and to pronounce itself on the issue of costs and interest in the trial Court suit.
2. The application was supported by the grounds on the face of it and the Supporting Affidavit of Learned Counsel for the Applicant sworn on even date. The Applicant averred that there was an oversight on the part of the Court as it failed to pronounce itself on the issue of costs and interest in the trial Court suit hence making no award for the same. He emphasised that this Court has the power to review its judgment and further that the Respondent would not be prejudiced in any manner whatsoever.
3. The Respondent strenuously opposed the application. He filed Grounds of Opposition dated 16<sup>th</sup> June 2025 and submitted that the Applicant had not met the threshold to warrant review of this Court's judgment. He contended that there were no errors, mistakes or omissions warranting review of the judgment as the Applicant was awarded costs on the appeal only as the Applicant's case at the trial Court was dismissed with costs to the Respondent herein. For these reasons, he urged this Court to dismiss the instant application with costs.
4. The application was disposed of by way of written submissions. The Applicant's submissions were dated 20<sup>th</sup> June, 2025. She reiterated that pursuant to Order 45 Rule 2 of the Civil Procedure Rules and Section 80 of the *Civil Procedure Act*, this court has unfettered discretion to grant the orders sought.



The Respondent's written Submissions were dated 27<sup>th</sup> June, 2025. He submitted that granting of the orders sought would amount to this Court sitting on appeal on its own finding and further that if the Applicant was aggrieved by the Court's failing to make an order on costs in her favour, then the available avenue was to pursue an appeal. He emphasized that the application entails a re-appraisal of the evidence and re-analysing its decision to establish whether or not the Applicant is entitled to costs and which is beyond the scope of the review jurisdiction. In the end, he submitted that the application lacked merit and should therefore be dismissed with costs.

5. Having considered the application, the response, the rival arguments and parties' written submissions, the issue that stands out for this Court's determination is whether the application is merited.

6. The power of review in the High Court is anchored under Section 80 of the Civil Procedure Act 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.

7. 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.

8. 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.

9. 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.

10. 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.
11. Behind the above legal background comes a consideration of the application. This Court has revisited and intently considered both the application and the judgment. As the issue at hand is whether this Court ought to review the judgment to include the costs and interest of the primary suit, a general look at the aspect of costs is necessary.
12. Section 27 of the *Civil Procedure Act* is on the issue of costs and provides as follows: -

Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

13. Based on the above provision, the trial Court upon dismissing the primary suit awarded costs to the Respondent herein. However, this Court did not render itself on the issue of costs of the primary suit in the appeal. The Supreme Court of Uganda in *Impressa Ing Fortunato Federice vs. Nabwire* [2001] 2 EA 383: had this to say on the issue of costs: -

.... The effect of section 27 of the *Civil Procedure Act* is that the Judge or court dealing with the issue of costs in any suit, action, cause or matter has absolute discretion to determine by whom and to what extent such costs are to be paid; of course like all judicial discretions, the discretion on costs must be exercised judiciously and how a court or a judge exercises such discretion depends on the facts of each case. If there were mathematical formula, it would no longer be discretion... While it is true that ordinarily, costs should follow the event unless for some good reason the court orders otherwise, the principles to be applied are: - (i). Under section 27(1) of the *Civil Procedure Act* (Chapter 65), costs should follow the event unless the court orders otherwise. This provision gives the judge discretion in awarding costs but that discretion has to be exercised judicially. (ii). A successful party can be denied costs if it is proved that but for his conduct the action would not have been brought. The costs should follow the event even when the party succeeds only in the main purpose of the suit...It is trite law that where judgement is given on the basis of consent of parties, a court may not inquire into what motivated the parties to consent or to admit liability since admission of



liability implied acceptance of the particulars of injuries enumerated in the plaint and the evidence in favour of the Respondent, including loss of hearing and speech.

14. Further, the High Court sitting in Kampala in *Re Ebuneiri Waisswa Kafuko (Deceased)* Kampala HCMA No. 81 of 1993 held that: -

... The Judge in his discretion may say expressly that he makes no order as to costs and in that case each party must pay his own costs. If he does not make an order as to costs, the general rule is that he shall order that the costs follow the event except where it appears to him in the circumstances of the case some other order should be made as to the whole or any part of the costs. But he must not apply this or any other general rule in such a way as to exclude the exercise of the discretion entrusted to him and the material must exist upon which the discretion can be exercised. This discretion, like any other discretion, must be exercised judicially and the judge ought not to exercise it against the successful party except for some reason connected with the case. It is not judicial exercise of the judge's discretion to order a party who has been completely successful and against whom no misconduct is even alleged to pay costs.

15. The foregoing was further restated and affirmed by Odunga, J. (as he then was) in *Matigari General Merchants Ltd & another v Nelly Wairimu Muthoni & another; Rose Wamuyu Wandaka (Interested Party)* [2021] KEHC 7946 (KLR).

16. In the instant case, the Applicant was aggrieved by the finding of the trial Court and that necessitated the appeal. On appeal, the Applicant was the successful party. Drawing from the decisions above, it is without a doubt that where the Court fails to make a finding of costs on a matter, the general rule is that costs are awarded to the successful party. According to the judgment on appeal, the Applicant herein was the successful party in the primary suit and as such, she was entitled to the costs of that suit. In a like matter in *Mahinda Vs Kenya Power & Lighting Co. Ltd* [2005] 2 KLR 418, the Court held that in such instances, the jurisdiction of the Court is meant to give effect to its intention at the time the decision was made. As the intention of this Court in the appeal was to make a finding in favour of the Applicant herein to the effect that the primary suit was successful and that it was wrongly dismissed with costs, and since costs follow the event, then this Court finds the application merited. Therefore, the inadvertence on this Court to pronounce itself on the costs of the primary suit can be corrected on review on account of a mistake or an error apparent on the face of the record since the mistake or an error is prima-facie visible and does not require any detail examination.

17. Deriving from the above discussion, the following final orders hereby issue: -

- (a) The Notice of Motion dated 28<sup>th</sup> February 2025 is allowed to the extent that the judgment of this Court dated 14<sup>th</sup> October 2024 be and is hereby reviewed and corrected at paragraph 45 to include a further order that costs in the primary suit being *Milimani CMCC 4624 of 2019* are awarded to the Applicant [then Plaintiff] as well as interest from the date of the judgment until payment in full.
- (b) As the application was occasioned by the action on the part of the Court, each party shall bear its own costs.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 12<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**A. C. MRIMA**



**JUDGE**

