



**Kahumbura v Njuguna (Civil Appeal E624 of 2024)
[2026] KEHC 606 (KLR) (Civ) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 606 (KLR)

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

CIVIL

CIVIL APPEAL E624 OF 2024

AC MRIMA, J

JANUARY 29, 2026

BETWEEN

JAMES KAHUMBURA APPELLANT

AND

RUTH NYAMBURA NJUGUNA RESPONDENT

RULING

1. Before this Court for determination is the Notice of Motion dated 12th February 2025 which sought the following orders: -
 1. That the Honourable Court be pleased to review and/or set aside the judgement dated 14th November 2024 particularly that each party should bear its own cost and award cost to the applicant/Respondent proportionate in the appeal.
 2. That in the result the applicant be and is hereby also awarded cost of the suit and interest in the trial court as per the judgement and decree of Hon. S. A. Opande delivered on 27th July,2020.
 3. That in the alternative, and in the event that the cost and interest awarded in the trial court remain in place, the same should be clarified for the understanding of the parties.
 4. That costs of this application be provided for.
 5. That such further and other relief be granted to the applicant as this court deems fit and expedient in the circumstances.
2. The application was supported by the grounds on its face and the supporting affidavit of Martin Njeru Nyaga, Learned Counsel for the Applicant which was sworn on 12th February 2025. The Applicant averred that the judgment of this Court dated 14th November 2024 was erroneous to the extent



that it did cater for the award of costs and interest to the Applicant nor gave reasons for denial of costs. The Applicant argued that judgment set aside the award of the lower Court of Kshs.780,000/= and substituted it with an award of Kshs.650,000/= but did not set aside the costs and interest that was awarded therein. He averred that Appellant/Respondent interpreted it otherwise. It was his contention that this Court did not clarify whether the costs and interest awarded to the Applicant in the lower Court remained in place and the date from which it should be calculated. For this reason, the Applicant argued that there was an apparent error on the face of the judgment as it does not state whether the costs and interests awarded by the trial Court are still in place.

3. The Appellant/Respondent strenuously opposed the application. He filed a Replying Affidavit sworn on 26th April 2025. He averred those matters raised in the application were findings of an Appellate Court and which can only be challenged through an appeal and not review since the Applicant was challenging the merits of the judgment and not an apparent error on the face of the record. He reiterated that there was no mistake or apparent error on the face of the record in the judgment of this Court. He averred that seeking further relief from this Court was inconsistent with the doctrine of finality of cases and further that the application was an attempt by the Applicant to re-open the issue of costs. In the end, he urged this Court to dismiss the application with costs for failing to meet the threshold under Order 45 Rule 1 of the Civil Procedure Rules.
4. The application was canvassed by way of written submissions. The Applicant's submissions were dated 28th May, 2025. They reiterated that there was an apparent error on the face of the record warranting review and for that reason, there is sufficient ground to review the judgment to clarify the issue of costs. The Respondent's submissions were dated 18th June 2025. He emphasized that the only recourse available to the Applicant was appeal as the determination of costs cannot be construed as an omission, mistake or error apparent on the face of the record, and further because the Court retains the absolute and unfettered discretion in the award of costs.
5. Having considered the application, the rival arguments and parties' written submissions, the issue that stands out for this Court's determination is whether the application is merited.
6. Section 80 of the [Civil Procedure Act](#) empowers the High Court to review its decree or orders as follows;
 80. 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 judgement 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 Rule 1 of the Civil Procedure Rules sets down the criteria for review applications as follows: -
 - 1. Application for review of decree or order:**
 - (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.

8. Courts have severally dealt with the issue of review. The Supreme Court in Application No. 8 of 2017, *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, upon establishing the following principles: -

(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. The Court of Appeal in Civil Appeal No. 2111 of 1996, *National Bank of Kenya v. Ndungu Njau* observed as follows in respect of reviews applications: -

“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. The import of Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules was considered by the High Court in Miscellaneous Application 317 of 2018, Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] eKLR. Upon considering comparative jurisprudence, the Court 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 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.
11. Having set out the law and the guiding legal principles in review applications, this Court will now consider the application on the basis of the said parameters. The Applicant went to a great extent in alluding how this Court's judgment is not clear on the aspect of costs in the trial Court. This is what this appellate Court stated in Paragraph 48 of its judgment: -
48. Accordingly, I find the appeal partially merited and hereby set aside the trial court's judgment of 27th July 2022 awarding the Respondent Kshs. 780,000/= and in its place, substitute it with a judgment of this court awarding the Respondent a sum of Kshs.650,000/=.



12. In essence, this Court did not interfere with the entire trial Court's judgment save by reducing the award from Kshs. 780,000/= to Kshs. 650,000/=. In other words, the rest of the orders made by the trial Court in its judgment remained intact. Therefore, this Court finds no error on the face of its judgment. Inevitably, the Applicant fails the test for review as he failed to bring himself within the bounds anticipated by Section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules.
13. In the premises, the application is unmerited and the following final orders hereby issue: -
- (a) The Notice of Motion dated 12th February 2025 is hereby dismissed with costs.
 - (b) Costs are hereby assessed at Kshs. 15,000/= [Fifteen Thousand Only].
- Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 29TH DAY OF JANUARY, 2026.

A. C. MRIMA

JUDGE

Ruling virtually delivered in the presence of:

Miss Kimathi, Learned Counsel for the Appellant.

Michael/Amina – Court Assistants.

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