



REPUBLIC OF KENYA



**Migosi & 2 others v Migosi & 2 others (Civil Appeal E005 of 2025)
[2026] KEHC 782 (KLR) (22 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 782 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CIVIL APPEAL E005 OF 2025
TW CHERERE, J
JANUARY 22, 2026**

BETWEEN

**ZACHARIA OBWAYA MIGOSI 1ST APPELLANT
DENNIS MOGAKA MIGOSI 2ND APPELLANT
MAURINE MIGOSI 3RD APPELLANT**

AND

**NYAKUNDI MIGOSI 1ST RESPONDENT
ELISHA MIGOSI 2ND RESPONDENT
EZEKIEL MIGOSI 3RD RESPONDENT**

RULING

1. Before this Court is the undated Notice of Motion seeking review of the judgment of this Court delivered on 10th July 2025.
2. The Applicants seek, inter alia, orders that this Court do correct, vary and/or set aside what they describe as errors apparent on the face of the record in the judgment dated 10th July 2025, that certain findings relating to adoption, matrimonial property and costs be revisited, and that they be allowed to place before the Court the original marriage certificate for scrutiny.
3. The application is supported by the undated joint Supporting statement and undated written submissions filed on behalf of the Applicants. It is opposed by the Appellants through the Replying Affidavit of Dennis Mogaka Migosi sworn on 03rd September 2025 and the Appellants' written submissions.



4. The Court has considered The Court has considered the application, the supporting and replying affidavits, the parties' written submissions, the judgment sought to be reviewed delivered on 10th July 2025.

Issues for determination

5. From the pleadings and submissions, the Court identifies the following issues for determination:
 1. Whether the application meets the statutory threshold for review under Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules.
 2. Whether this Court, having rendered the impugned judgment in its appellate jurisdiction, can revisit the merits of that judgment through the review jurisdiction
 3. What orders should issue.

Analysis and determination

1. Whether the statutory threshold for review has been met

6. Section 80 of the *Civil Procedure Act* empowers a court to review its decree or order where a party considers himself aggrieved, subject to the conditions set out in Order 45 Rule 1 of the Civil Procedure Rules.
7. Order 45 Rule 1 circumscribes the grounds upon which review may be granted to the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced at the time the decree was passed, a mistake or error apparent on the face of the record, or any other sufficient reason, and further requires that the application be brought without unreasonable delay.
8. The principles governing the exercise of the review jurisdiction are settled. In *National Bank of Kenya Limited v Ndungu Njau*, Civil Appeal No. 211 of 1996 [1997] eKLR, the Court of Appeal held that a review is available only to correct an obvious and self-evident error on the face of the record, and not to enable a court to reconsider its decision on the merits or to take a different view of the law or evidence.
9. In *Accredo AG & 3 Others v Stefano Uccelli & Another* [2017] eKLR, the Court of Appeal reiterated that the grounds for review are exhaustive and that review jurisdiction cannot be invoked to reopen a case or to challenge the correctness of a decision.
10. In *Pancras T. Swai v Kenya Breweries Limited* [2014] eKLR, the Court of Appeal emphasized that although the power of review is discretionary, it must be exercised judiciously and within the confines of Order 45 Rule 1, and that the phrase "any other sufficient reason" must be construed ejusdem generis with the other grounds set out in the rule.
11. The Court in *Republic v Advocates Disciplinary Tribunal ex parte Apollo Mboya*, Miscellaneous Application No. 317 of 2018 [2019] eKLR, cautioned that review jurisdiction should not be used as a backdoor appeal or as a mechanism for re-litigation of matters already determined.
12. From the foregoing authorities, it is clear that the review jurisdiction is narrow and circumscribed. A court may only intervene where there is a manifest and self-evident error on the face of the record or other grounds expressly permitted by law, and not to reconsider the merits of a decision or to reach a different conclusion on the same material.



13. None of the matters raised disclose a self-evident error apparent on the face of the record, nor has any new and important evidence been demonstrated to have been unavailable despite the exercise of due diligence at the time of the appeal.
14. Consequently, I find that the Applicants/Respondents have not satisfied the statutory threshold for review under Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules.

2. Whether this court can revisit the merits of its appellate judgment

15. This Court rendered the judgment sought to be reviewed in exercise of its appellate jurisdiction.
16. The review jurisdiction cannot be employed to enable a court to sit on appeal over its own judgment. To do so would blur the clear distinction between review and appeal and would offend the hierarchy of courts established under the Constitution.
17. Once this Court determined the appeal on its merits, any party aggrieved by that decision can only seek redress before the Court of Appeal. This Court is functus officio as regards the merits of the appeal, save for the limited jurisdiction of review strictly circumscribed by law.
18. The Applicants/Respondent's' application, viewed holistically, invites this Court to re-hear the appeal and to arrive at different conclusions on the same material. That invitation must be declined.

Disposition

19. In light of the foregoing findings, the Court makes the following orders:
 1. The Respondents/Applicants' undated Notice of Motion seeking review of this court's judgment dated 10th July 2025 is dismissed
 2. Costs of the application are awarded to the Appellants/Respondents.

DELIVERED AT NYAMIRA THIS 22ND DAY OF JANUARY 2026

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Hilda

Respondents/Applicants' - Present in person

For Appellants/Respondents - Wesonga G.O & Co. Advocates

