



REPUBLIC OF KENYA



KENYA LAW
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SH v SHB (Suing as the Mother and Next Friend of the Minor) (Civil Case E002 of 2025) [2026] KEHC 372 (KLR) (22 January 2026) (Judgment)

Neutral citation: [2026] KEHC 372 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MARSABIT
CIVIL CASE E002 OF 2025
FR OLEL, J
JANUARY 22, 2026**

BETWEEN

SH APPELLANT

AND

**SHB (SUING AS THE MOTHER AND NEXT FRIEND OF THE
MINOR) RESPONDENT**

(An Appeal from the Ruling and Order of the children's court at Marsabit Children's case No 4 of 2016 delivered by Honourable S.K Arome (PM) ON 30 th July 2025)

JUDGMENT

A. Introduction

1. This Appeal arises from the Ruling/Order of Hon S.K Arome (Principal Magistrate) dated 30th July 2025, where, he dismissed the Appellant's review Application dated 30th May 2025 on the basis that the court lacked jurisdiction to hear and determine the same.
2. The background hereto is that the respondent instituted a children's maintenance case vide Marsabit Children's case No 04 of 2016, which was heard on merit and judgment delivered on 27th April 2016, where the Appellant was directed to be paying the respondent a sum of Kshs.10,000/= per month for the child's upkeep and also to cater for the minor's school fees. Further it was also provided for in the said judgment that both parties were at liberty to periodically review the orders issued should circumstances change or require.
3. Based on the latitude granted by the said judgment, the Appellant filed his review application dated 30th May 2025 seeking to review and vary the said judgment, by seeking to be given custody of the minor and/or setting out reasonable access timelines. He further sort to have the monthly maintenance be reduced to Kshs.5,000/= and he maintains paying school fees as earlier ordered.



4. He based his argument on the ground that it was almost 10 years since the judgment was passed and significant change of circumstance had occurred to both parents including the fact that he had remarried and established a new family with two children as dependants, while the respondent too had since established a profitable business, and was thus capable of increasing her contribution to the minors upkeep and maintenance based on the well founded principle of shared parental responsibility.
5. It was also important that the court considers the ascertainable wishes of the child taking into account his age, maturity and the fact that he was no longer a child of tender years but a boy who was now a teenager and needed guidance from his father to instil good moral upbringing as he enters into adulthood. There had also been significant economic change in his financial capability, which made it difficult raise the Kshs.10,000/= on monthly basis. His application thus had merit and he urged the court to allow the same.
6. The respondent opposed this Application through her replying affidavit dated 7th July 2025 stating that the Appellant had not advanced any reasonable grounds/arguments in support of his contention and that under Islamic law the mother to the child had more right over custody of her children regardless of sex until they were aged 7 years and thus the earlier orders issued should not be interfered with. Further, it was her contention that the Appellant was a person of loose morals and would not give the minor quality time as he spent most of the time socializing with his friends She thus prayed that the said Application be dismissed.
7. The trial court considered the said Application and vide his ruling dated 30th July 2025, stated that the earlier judgment delivered had conclusively settled the matter and thus the court had no jurisdiction to deal with the said matter.

B. The Appeal

8. The Appellant, being dissatisfied with the said ruling, proceeded to file his memorandum of Appeal, where they raised five (5) grounds of Appeal, namely;
 - a. That the learned Magistrate erred in law and in fact in dismissing the Appellants notice of motion Application dated 20th May 2025 without analysing and contextualizing the evidence and submissions presented by the Appellant.
 - b. That the learned Magistrate erred in law and in fact by misdirecting himself by misapplying and misinterpreting the law by invoking Section 99 of the *Civil Procedure Act* on amendment of judgments, decrees and orders, as opposed to Section 80 of the Act which provides for review of judgments and decrees.
 - c. That the learned Magistrate erred in law and fact in arriving at conflicting decisions where on one hand he states that the Honourable court has jurisdiction to entertain the application, while on the other hand he concluded by stating, that the court did not have jurisdiction to determine the review application.
 - d. That the learned Magistrate erred in law and fact by failing to address his mind on the judgment delivered by the Hon B.M Ombewa on 27th April 2016, which on its last paragraph, it clearly stated that parties were at liberty to periodically review the orders issued should circumstances change or require.
 - e. That the learned Magistrate erred in law and fact at arriving at conclusions which was confusing and that the Ruling failed to address the issues holistically and comes out as haphazard.



9. The Appellant thus prayed that the Ruling delivered by the trial Magistrate on 30th July 2025, be set aside in its entirety and do proceed to allow the said application as presented.

C. Analysis And Determination

10. This court has examined the Record of Appeal, the grounds of appeal, and given due consideration to the submissions by the parties' respective Counsel. This being a first appeal, this court has the duty to analyze and re-examine the evidence adduced in the lower court and reach its own conclusions, but always bearing in mind that it neither saw nor heard the witnesses testify and make allowance for the said fact.
11. In *Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates* [2013] eKLR, the court stated as follows-

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and re-analyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”

12. A first appellate court is also the final court of fact, and litigants are entitled to full, fair independent consideration of the evidence. The parties have a right to be heard both on issues of fact and issues of law, and the court must address itself to all issues raised and give reasons thereof. While considering the entire scope of Section 78 of the *civil procedure Act* a court of first appeal can appreciate the entire evidence and come to a different conclusion. See *Kurian Chacko Vs Varkey Joseph* AIR 1969 Kerala 316.
13. The gist of this Appeal rests on the issues as to whether the trial court correctly interpreted the law governing a review application while also considering the earlier judgment dated 27th April 2016, which expressly allowed any party liberty to periodically review the said judgment should the circumstance change.
14. Section 80 of the *Civil Procedure Act* provides as follows:

Section 80. Review

“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.”

Order 45 Rule 1 of the Civil Procedure Rules

[Order 45, rule 1.] Application for review of decree or order.

“1. (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”
15. From the above provisions, it is clear that while Section 80 of the *Civil Procedure Act* grants the court the power to make orders for review, while Order 45 sets out the jurisdiction and scope of review by hinging review to discovery of new and important matters or evidence, mistake or error on the face of the record and any other sufficient reason.
16. The Court of Appeal had the following to say in an application for review in the case of National Bank of Kenya Ltd vs Ndungu Njau(2001) eKLR
- “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 a 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 proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.”
15. Order 45 Rule (1),(b) of the Civil Procedure Rules provided for several instances, where a party can apply for review, one being that if he/she has “for any other sufficient reason, desires to obtain a review of the decree or order.”
16. As regards “sufficient reason” the Court of Appeal in Pancras T. Swai vs Kenya Breweries Limited, Civil Appeal No.275 of 2010 made the observation that:
- “As repeatedly pointed out in various decisions of this Court, the words, “for any sufficient reason” must be viewed in the context firstly, of Section 80 of the *Civil Procedure Act*, Cap 21, which confers an unfettered right to apply for review and secondly, on the current jurisprudential thinking that the words need not be analogous with the other grounds specified in the order. In Sarder Mohamed vs Charan Singh Nand Sing and Another (1959) EA 793, the High Court correctly held that Section 80 of the *Civil Procedure Act* conferred an unfettered discretion in the Court to make such order as it thinks fit on review and that the omission of any qualifying words in the Section was deliberate. In Shanzu Investments Limited vs Commissioner for Lands (Civil Appeal No. 100 of 1993) this Court with respect, correctly invoked and applied its earlier decision in Wangechi Kimata and Another vs Charan Singh (C.A. No. 80 of 1985) (unreported) wherein this Court held that;
- “any other sufficient reason need not be analogous with the other grounds set out in the rule because such restriction would be a clog on the unfettered right given to the Court by Section 80 of the *Civil Procedure Act*; and that the other grounds



set out in the rule did not in themselves form a genus or class of things which the third general head could be said to be analogous.”

15. Section 80 of the *Civil Procedure Act*, and Order 45 of the Civil Procedure Rules, expressly allows the court to review its judgment and/or ruling and it was a clear error for the trial court to determine that it had no jurisdiction to do so. Further the previous trial Magistrate Hon B.M. Ombewa (SRM) vide his judgment dated 26th April 2016 specifically allowed the parties periodically review the order issued should circumstances change or require and it is obvious that the Appellant moved court based on the “window” granted by the court seeking review and cannot be shut out from the seat of justice before being heard.
16. Secondly the grounds raised by the Appellant in his supporting affidavit constituted, “sufficient reasons” the basis upon which the trial court ought to have considered the said Application and make a determination thereon on merit.

D. Disposition.

15. The upshot having made the above analysis on the evidence adduced, I do find that this appeal has merited and allow the same on the following terms;
 - i. The Ruling of the learned trial Magistrate Hon S.K Arome (PM) dated 30th July 2025 dismissing the Appellants Application dated 30th May 2025 is hereby set aside
 - ii. The said Application be heard afresh before a different Magistrate and it be determined on its merit
 - iii. Both parties will bear their own costs, since it is a family matter.
15. It is so ordered.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT MARSABIT THIS 22ND DAY OF JANAURY, 2026.

FRANCIS RAYOLA OLEL

JUDGE

Delivered on the virtual platform, Team this 22nd day of January, 2026.

In the presence of: -

Mr. BiwottAppellant

Present in Court Respondent

Mr. Jarso Court Assistant

