



**LWK v JMN (Family Appeal E103 of 2023)  
[2026] KEHC 274 (KLR) (Family) (22 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 274 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
FAMILY APPEAL E103 OF 2023  
HK CHEMITEI, J  
JANUARY 22, 2026**

**BETWEEN**

**LWK ..... RESPONDENT**

**AND**

**JMN ..... APPLICANT**

**RULING**

1. In her application dated 4<sup>th</sup> July 2025 the Applicant prays for the following orders:-
  - (a) That this court be pleased to issue stay, vary and or set aside the judgment issued on 26<sup>th</sup> June 2025.
  - (b) That this court be pleased to review and vary the orders issued on the 26<sup>th</sup> day of June 2025 granting full custody of the minors’ children to the Appellant and retain the actual and physical custody of the minor children with the Mother/Applicant and allow for unsupervised access to the appellant.
  - (c) That the court be pleased to remit custodial matter back to the Children’s Court for full investigation, psychological evaluation and determination on phased custody arrangements under the framework of section 76 of the Children’s Act 2022.
  - (d) Any orders that the court may deem fit to grant.
2. The application is based on the grounds thereof and the Applicant’s sworn affidavit dated the same date.



3. The substance of the Applicant's averment are not that she was opposed to the judgement of the court but that the children were experiencing some psychological trauma as a result of the Respondent being granted custody.
4. She further deponed that she had been with the children all along and that they indeed missed a mother figure while they are with their father hence the need to vary the orders.
5. She cited Article 53 of the Constitution and the Section 8 of the Children's Act.
6. The Respondent vide his replying affidavit dated 8<sup>th</sup> July 2025 has opposed the application vehemently arguing that the applicant does not deserve the orders having failed to comply with the judgement of this court. That she had hidden the children from the Respondent for the last three years and that they were not going to school.
7. He said that all efforts to negotiate the matter including the divorce proceedings in Thika became futile and thus she does not deserve the orders sought. Further that he was a responsible father and would take care of the children and their needs.
8. The court has perused the submissions filed herein by the parties as well as the cited authorities.
9. Subsequent to the filing of this application there were other applications filed by the parties, some of which have been dealt with.
10. The court after the judgement had a lengthy off the record discussion with the parties and the minor children. It was at this period that the Respondent was able to see the children and I suppose had actual custody of them after three years and more specifically after the judgement of this court.
11. The application before me is to do with reviewing the judgment of 26<sup>th</sup> June 2025. The grounds for review are stated under Section 80 of the Civil Procedure Act and rule 45 (1) of the Civil procedure rules. The said rules states that.;
  - “(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.”
12. Looking at the reasons advanced by the Applicant I respectfully do not see any new and important matter incapable of having not been discovered by the Applicant while arguing the appeal. The issues which confronted the court were based on the evidence at the trial court. This court arrived at an irresistible conclusion that the Respondent was better placed having the custody of the minors and that the Applicant would have weekend and holidays custody.



13. The issue of psychological suffering by the children may not be something new and in any case there was no tangible evidence to that effect. It is also not lost to the court that the Applicant in her own supporting affidavit does not object to the lines taken in the judgement.
14. In my view therefore this court is funtus officio. The issues raised by the Applicant concerning reviewing the manner of custody, the psychological well being of the minors can well be applied at the Children’s Court but to the extent of the judgement of this court. I appreciate that the children’s rights are not static. The parties in the matter have all the latitude to move the court at any time they find necessary.
15. The only available avenue now for the Applicant is either to pursue an appeal or move back to the trial court for any necessary orders she may deem necessary.
16. In the premises I do not find “any other sufficient reason” as submitted by the Applicant to review the judgment.
17. In the premises the application is hereby dismissed for the simple reason that the court is funtus officio.
18. Costs in the cause.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 22<sup>ND</sup> DAY OF JANUARY 2026.**

**H K CHEMITEI**

**JUDGE**

