



**IN THE HIGH COURT OF KENYA AT NAIROBI**

**HCC NO. 15 OF 2007**

**IN THE MATTER OF SECTION 17 OF THE MARRIED WOMEN'S PROPERTY ACT 1882**

**S K.....PLAINTIFF**

**VERSUS**

**J J K.....DEFENDANT**

**RULING**

1. The Motion dated 17<sup>th</sup> May 2013 seeks review of orders made on 2<sup>nd</sup> May 2013 with regard to maisonette number 7 in *[particulars withheld]* erected on LR No. *[Particulars withheld]*. The order of 2<sup>nd</sup> May 2013 required the applicant to vacate the said property.
2. The applicant's case is that she and the child of the marriage have been occupying the said maisonette for over 15 years. They spend the child's school holidays and most half- term breaks in Nairobi at the residence. She seeks review on the basis that her former lawyer failed to annex crucial evidence. She states that if the said advocates had annexed the said documents the court would not have made the orders of 2<sup>nd</sup> May 2013.
3. The respondent has responded to the application through his affidavit sworn on 9<sup>th</sup> June 2013. He argues that review can only be granted upon discovery of new evidence which could not be produced at the time when the order was made on 2<sup>nd</sup> May 2013. He states that this evidence was available but the advocate who was acting for the applicant then choose not to rely on it and furnish it to the court. That amounted to failure or negligence on the part of the advocate, and the same is not a basis for review. The rest of the affidavit dwells on matters that not germane to the matter at hand.
4. The applicant sworn a further affidavit on 15<sup>th</sup> July 2013. She dwells on renovations she made on the property and reasons why it is important for her and the child to come to Kenya during the child's school holidays.
5. Both parties filed written submissions, and attached various authorities to the said written submissions.
6. The law on review is Order. 40 of the Civil Procedure Rules. Review is granted on three grounds – error on the face of the record, discovery of new important evidence that was not available at the time the order was made and any other sufficient reason.
7. It is clear that there is no error apparent on the face of the record. The applicant appears to ground her case on discovery of new important evidence. From the affidavits in support of the application it is clear to me that the applicant is saying that she had given her advocates documents that would have tilted the case in her favour had he used the documents. Quite clearly there is no discovery of new evidence. The evidence was available at the time the orders were made but the advocate for the applicant elected not to rely on that evidence. The question of other sufficient reason does no arise in view of the above.

9. There is no basis upon which I can review the orders made on 2<sup>nd</sup> May 2013. I am convinced that a case has not been made for review of the said orders. Consequently, I find that the application dated 17<sup>th</sup> May 2013 is without merit, and I do hereby dismiss the same with costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 26<sup>th</sup> DAY OF September, 2014.**

**W. MUSYOKA**

**JUDGE**