



**GDM v CMM (Divorce Cause 1 of 2019) [2024] KEHC 1139 (KLR) (8 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1139 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
DIVORCE CAUSE 1 OF 2019  
TW CHERERE, J  
FEBRUARY 8, 2024  
IN THE HIGH COURT OF KENYA AT MERU  
DIVORCE CAUSE NO. 1 OF 2019  
(CORAM: CHERERE-J)**

**G.D.M.....PETITIONER/APPLICANT**

**VERSUS**

**C.M.M.....RESPONDENT**

**RULING**

**BETWEEN**

**GDM ..... PETITIONER**

**AND**

**CMM ..... RESPONDENT**

**RULING**

**Brief Background**

1. By judgment dated 30<sup>th</sup> June, 2022, this court made the following orders:
  1. Both the Petition and Cross-Petition are allowed and the marriage between the Petitioner and the Respondent is hereby dissolved
  2. Decree nisi shall issue and become absolute in 30 days
  3. The prayer for alimony is dismissed



4. Each party shall bear its own costs
2. Subsequently, Petitioner/Applicant lodged an application dated 29<sup>th</sup> June, 2023 seeking the following orders: -
    - a. Spent
    - b. Spent
    - c. Spent.
    - d. That this Honourable Court be pleased to allow the petitioner to continue collecting rents from the premises known as Title Number Ntima/Ntakira/417 for her sustenance.
    - e. That the Honourable Court be pleased to review and vary its judgement of 30/6/2022 and set aside the order dismissing the prayer for alimony and substitute the same with an order granting the petitioner an appropriate amount for alimony
    - f. That this Honourable Court be pleased to make such further orders as may be necessary to ensure justice to all parties
    - g. That the costs for this application be provided for.
  3. Respondent opposed the application by way of grounds of opposition dated 10<sup>th</sup> October, 2023 on grounds inter-alia that: -
    - a. The application is wrongly before this court having been filed without a consent between the applicant's current and the applicant erstwhile advocates nor a court order granting the firm of Machirah & Muriki Co. Advocates leave to come on record for the Petitioner/Applicant against order 9 rule 10 of the *Civil Procedure Rules*.
    - b. The application does not disclose any reasonable cause of action to warrant consideration of the orders sought to review the judgement of 30<sup>th</sup> June, 2022
    - c. The instant application in its entirety and contents, will embarrass this Honourable Court as it has been made after inordinate and unreasonable delay as it has been over one year since the judgement was made.
    - d. The application is frivolous, scandalous, vexatious and an abuse of the Court's process as it is an attempt by the applicant to unjustly enrich herself from the respondent years of hard labour.
  3. I have considered the application in the light of the supporting affidavit, the grounds of opposition and submissions made on behalf of both parties and the issues for determination are as follows;
    1. Whether the firm of Machira & Muriki Co. Advocates are properly on record for the Petitioner/Applicant
    2. Whether a case for review of the orders issued on 30<sup>th</sup> June, 2022 has been made
    3. Concerning the first issue, the provisions of order 9 rule 9 of the *Civil Procedure Rules* make it mandatory that change of Advocates after judgment has been entered must be through an order of the court upon application with notice to all parties or upon a consent filed between the outgoing advocate and the proposed incoming advocate (See *Violet Wanjiru Kanyiri v Kuku Foods Limited* [2022] eKLR).



4. On 29<sup>th</sup> November, 2023, a consent signed by the firm of Machira & Muriki Co. Advocates and Kinyanjui Kirimi & Co. Advocates was filed allowing the former firm to come on record for the Petitioner/Applicant in place of the latter firm.
5. I have considered the holdings in *Martin L Barasa v Giza Systems Smart Solutions Ltd* [2022] eKLR and *Joe Kazungu Yaa Vs Director of Lands, Adjudication & Settlement & Others* [20221] eKLR and there being no evidence that Respondent has suffered any prejudice from Applicant's advocate's action of regularizing its position after the filing of the current application, I find that the firm of Machira & Muriki Co. Advocates are properly on record for the Petitioner/Applicant.
6. On the second issue, the law governing review of orders is anchored under Section 80 of the *Civil Procedure Act* and order 45 (1) of the *Civil Procedure Rules*. Under Order 45(1) of the Rules, a party seeking review must prove that the application is filed without unreasonable delay; discovery of new or 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. Under section 80 of the *Civil Procedure Act*, the court has unfettered discretion to make such order as it thinks fit on sufficient reason being given for review of its decision. However, this discretion should be exercised judiciously and not capriciously.
7. At the hearing of the divorce cause, the parties agreed that the Petitioner/Applicant was collecting rent from rental houses on LR. No. Ntima/Ntakira/417 which was inadvertently referred in the judgment as LR. No. Ntima/Ntakira/414.
8. Other than the rental income, Petitioner/Applicant additionally sought alimony in the sum of Kshs. 300,000/- monthly. In the absence of prove of alimony, this court disallowed the prayer for alimony but did not bar the Petitioner/Applicant from continuing to collect rent from LR. No. Ntima/Ntakira/417 the reasoning behind it being that the matter of matrimonial property is the subject of Meru High Court Matrimonial Cause No. 14 of 2019 pending determination between the parties herein. It would therefore be mischievous for any of the parties herein to construe the dismissal order for alimony to include an order barring the Applicant from collecting rent from LR. No. Ntima/Ntakira/417 for that was not an issue for determination in the divorce cause.
9. Having said that, there is no mistake or error apparent on the face of record and/or any sufficient reason to warrant this court set aside its decision dismissing the prayer for alimony.
10. However, in the interest of justice and for avoidance of doubt, the parties shall revert to the position concerning collection of rent from LR. No. Ntima/Ntakira/417 that subsisted as at 30<sup>th</sup> June, 2022, until further orders of the court in Meru High Court Matrimonial Cause No. 14 of 2019.
11. It is so ordered

**DATED AT MERU THIS 08<sup>TH</sup> DAY OF FEBRUARY 2024**

**T. W. CHERERE**

**JUDGE**

Appearance

Court Assistants - Kinoti/Munene

For Appellant - Ms. Machira for Machira & Muriki Co. Advocates

For Respondent - Ms. Kinyanjui for Kivuva Omuga & Co. Advocates

