



**TJS v NRS (Civil Suit 69 of 2019) [2024] KEHC 1398 (KLR)
(Family) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1398 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL SUIT 69 OF 2019
HK CHEMITEI, J
FEBRUARY 15, 2024**

BETWEEN

TJS APPLICANT

AND

NRS RESPONDENT

RULING

1. This ruling relates to the Notice of Motion dated 14th February, 2023 filed by the Applicant, TJS seeking for Orders That:
 - a. The judgment delivered on 6th October, 2022 be reviewed to provide that the Respondent immediately surrender to the Applicant the title deeds in respect of Ngong/ Ngong/ 45925, Ngong/ Ngong/ 45924 and Ngong/ Ngong/ 44571.
 - b. The judgment delivered on 6th October, 2022 be reviewed to provide that the Respondent and/ or her agents do immediately vacate the property known as L. R. 195/ 111.
 - c. Costs be provided for.
2. The Respondent opposed the application and filed a replying affidavit sworn on 6th March., 2023 and written submissions dated 28th April, 2023.
3. The Applicant filed written submissions dated 29th April, 2023.

Background:

4. The parties' marriage was dissolved vide *decree nisi* absolute issued on 2nd January, 2017 in Milimani Divorce Cause No. 699 of 2015.



5. The Applicant filed originating summons dated 28th October, 2019 seeking for orders that:
- a. The Respondents do return or otherwise cause to be handed over to the Applicant personal effects and property as more particularly itemized below:
 - i. The Title Deeds in respect of Ngong/ Ngong/ 45925;
 - ii. The Title Deeds in respect of Ngong/ Ngong/ 45924;
 - iii. The Title Deeds in respect of Ngong/ Ngong/ 44571;
 - iv. The Plaintiff's personal documents including: Pin certificate. Birth certificate. Marriage certificate.
 - v. Log book in respect of motor vehicle registration number KAS 914G.
 - vi. Other miscellaneous documents and household items, such as linens, crockery and household utensils either removed from the matrimonial home prior to separation or kept by the Respondent thereafter by denying the applicant access to his own property.
 - b. The household items (matrimonial property) be divided between the parties as more particularly itemized in the schedule to the affidavit.
 - c. The Respondent be ordered to leave the Applicant's property L. R. 195/ 11.
 - d. Costs be provided for.
6. Judge A. O. Muchelule (as he then was) delivered a judgment on the application above on 6th October, 2022 and, at paragraph 17, declared that:
- a. The property L. R. No. 95/ III at Karen is matrimonial property and that the respondent is entitled to 15% of its value; that the property shall be valued and the applicant shall pay to the respondent 15% of the value, which value can be recovered summarily as a civil debt.
 - b. Properties Ngong/ Ngong/ 45925, 45924 and 44571 are matrimonial property and the applicant is entitled to 70% of each property and the respondent entitled to 30% of each; and the properties shall be valued and the respondent pays to the respondent 30% of the value of each; failing which they will be sold and the proceeds shared at 70%: 30% in favor of the applicant.
 - c. The applicant shall keep vehicle KAS 914G.
 - d. The respondent shall keep the household goods.
 - e. The respondent shall immediately surrender the logbook, pin and birth certificate to the applicant.

Analysis and Determination:

7. I have carefully considered the application before the court; the response and the written submissions filed by the parties and find that the issue in my view is simple, namely the implementation of the decree. From the reading of the court's judgement, there was no time frame given to the parties to implement the same. They were expected, I suppose that once the decision is made they will be reasonable enough to execute.



8. This respectfully does not need a review of the judgment. It only needs the court to give a time frame for its implementation seeing that the parties together with their counsels are unable to agree.
9. At the same time, and as rightfully submitted by the respondent there was no order that she shall vacate the premises at LR no 195/111 Karen. The directive was to have it valued and the applicant to pay her 15% share. Neither was there any directive that the premises can be rented out to a third party for purposes of collecting the rent. This was unilaterally done by the respondent.
10. The respondent has been obviously collecting the rent without the applicant benefiting at all. If the reason was to raise the funds to maintain the minor, then it would have been necessary to approach this court or the children's court which it appears the parties have a pending matter.
11. It is therefore necessary that the respondent accounts for the rent she has collected from the day she rented the premises. The rendering of the said accounts is necessary since her entitlement is only 15% and the balance of 85 % is meant for the applicant.
12. As to titles numbers Ngong /Ngong /45924,45925, and 44571 the same ought to be surrendered to the applicant or his advocate on record for purposes of effecting the decree. Simply holding them in light of the decree is not efficacious but will simply exacerbate the parties' problems and prolong this matter.
13. A court can review its judgement based on the provisions of section 80 of the Civil Procedure Act and rule 45 (1) of the rules thereunder.
14. In Environment and Land Case 21 of 2021 {Formerly of Environment and Land Court at Kisii Case 254 of 2014) - Kenya Law the court quoted with authority, Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] eKLR High Court of Kenya Nairobi Judicial Review Division Misc. Application No. 317 of 2018 where John M. Mativo Judge culled out the following principles from a number of authorities: -
 - i. A court can review its decision on either of the grounds enumerated in Order 45 Rule 1 and not otherwise.
 - ii. The expression "any other sufficient reason" appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds.
 - iii. An error which is not self-evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of record justifying exercise of power under Section 80.
 - iv. An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
 - v. A decision/order cannot be reviewed under Section 80 on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.
 - vi. While considering an application for review, the court must confine its adjudication with reference to material, which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.
 - vii. Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or



evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.

- viii. A mistake or an error apparent on the face of the record means a mistake or an error, which is prima-facie visible and does not require any detail examination. In the present case the petitioner has not been able to point out any error apparent on the face of the record.
 - ix. Section 80 of the *Civil Procedure Code* provides for a substantive power of review by a civil court and consequently by the appellate courts. The words occurring in Section 80 mean subject to such conditions and limitations as may be prescribed thereof and for the said purpose, the procedural conditions contained in Order 45 Rule 1 must be taken into consideration. Section 80 of the *Civil Procedure Code* does not prescribe any limitation on the power of the court, but such limitations have been provided for in Order 45 Rule 1.
 - x. The power of a civil court to review its judgment/decision is traceable in Section 80 *CPC*. The grounds on which review can be sought are enumerated in Order 45 Rule 1.”
15. I do not think that the application comes closer to the above cited authority. There is as found earlier above nothing to review. So as to save on the courts judicial time i direct as hereunder;
- (a) The parties execute the decree of this court dated 6th February 2023 within 90 days from the date herein.
 - (b) The applicant and the respondent shall get a common professional valuer who shall value the mentioned properties namely LR No 195/111 Karen, Ngong/Ngong/45924,45925 and 4471 and proceed as directed by the court.
 - (c) Both parties shall share the costs of the valuer equally and in the event of refusal by any of the parties the willing party shall pay and recover from the unwilling party as a civil debt and or alternatively factor it in the final division and recover therefrom.
 - (d) In the event that they are unable to agree on the valuer then each party at its own costs shall appoint its own valuer and proceed appropriately.
 - (e) The respondent shall within 7 days from the date herein surrender all the titles she is holding in her custody to the counsel on record for the applicant who shall hold the same in trust pending the finalization of the above process.
 - (f) The respondent shall render accounts to the applicant of the rent received from renting out the premises at Karen LR No 195/111 within 14 days from the date herein and deduct from the same any expenses lawfully incurred as well as her 15% portion and thereafter surrender the balance to the applicant.
 - (g) In furtherance of (f) above henceforth and to the extent that the premises accrues monthly rent the applicant shall be entitled to 85% and the respondent 15% after expenses and other statutory deductions have been made.
 - (h) Liberty to apply granted.
 - (i) costs in the cause.



DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 15TH DAY OF
FEBRUARY 2024.

H K CHEMITEI.

JUDGE.

