



**RCC v ECC & another (Divorce Cause 5 of 2011)  
[2024] KEHC 7275 (KLR) (19 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7275 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
DIVORCE CAUSE 5 OF 2011  
JK SERGON, J  
JUNE 19, 2024**

**BETWEEN**

**RCC ..... PETITIONER**

**AND**

**ECC ..... 1<sup>ST</sup> RESPONDENT**

**GCT ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The application coming up for determination is a notice of motion seeking the following orders;
  - (i) That this Honourable Court be pleased to review the consent orders of this Honourable Court given on 16th July, 2020 by including Property Title No. I.R XXXX(L.R No. XXXX) in the list of properties listed therein.
2. The application is supported by grounds on the face of it and the supporting affidavit of RCC, the applicant herein.
3. The applicant avers that vide a petition dated 21st March, 2011, she commenced divorce proceedings against the respondents seeking for annulment of marriage with the 1st Respondent.
4. The applicant avers that vide a consent dated 13th July, 2020, the applicant withdrew the petition in its entirety, the matter having been resolved amicably between the 1st Respondent and the applicant.
5. The applicant avers that part of the consent was that the applicant would withdraw the cautions registered by herself on certain properties that were in the name of the 1st respondent.
6. The applicant avers that unfortunately and mistakenly, parties omitted to include Property Title No. I.R XXXX (L.R No. XXXX) which was part of the properties in which the applicant had placed a caveat and registered a court order prohibiting any dealings in the said property.



7. The applicant avers that the 1st Respondent has since passed on and his estate is in the process of being administered.
8. The applicant avers that it is in the interest of justice that this Court review the consent adopted by this Court on 16th July, 2020 by including Property Title No. I.R XXXX (L.R No. XXXX) in the list of properties to enable the estate to remove the court order registered against the title.
9. The application is unopposed. I have considered the application and the sole issue for determination is whether to review the consent adopted by this Court on 16th July, 2020 by including Property Title No. I.R XXXX (L.R No. XXXX) in the list of properties to enable the estate to remove the caveat registered against the title. The answer is in the affirmative.
10. Under section 80 of the *Civil Procedure Act*, the court has unfettered discretion to make such orders as it thinks fit on sufficient reason being given for review of its decision or orders. However, this discretion should be exercised judiciously and not capriciously. Order 45, Rule 1 (b) of the Civil Procedure Rules is clear that for the court to review its decision, certain requirements should be met. This section provides as follows:

“(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.”

11. I have carefully considered the grounds in support of the application together with the relevant law and authorities on review. The Applicant is seeking to review a consent order she entered with ECC. Unfortunately, ECC is now deceased. It was necessary to have the input of them over the Application. This Court cannot therefore entertain the Application. In any case, the applicant avers that she is the one who registered the caveat against I.RXXXX(L.R. No.XXXX). She can as well withdraw the Caveat under the relevant laws without having the consent order reviewed. The Application does not meet principles applied in determining an Application for review.
12. In the end, the Application dated 1<sup>st</sup> September, 2023 is found to be unmeritorious. The same is dismissed with no order as to costs.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 19TH DAY OF JUNE, 2024.**

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**J.K. SERGON**

**JUDGE**

**In the Presence of:**

**C/Assistant – Rutoh**



**Ondiek for the Appellant**

**No Appearance for the Respondent**

