



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 63 OF 2011

B G P.....PETITIONER

-VERSUS-

K B B.....RESPONDENT

RULING

1. The matter before me for determination is the Notice of Motion dated 6th November 2013 and taken out under Sections 1A, 1B and 3A of the Civil Procedure Act and Orders 45 Rule 1 (1) and 3(2) and 51 Rule 1 of the Civil Procedure Rules. It seeks for a review of the court's order made on 8th October 2013 so that it fixes the amount of maintenance to be paid to the respondent by the petitioner at Kshs. 100,000.00 per month.
2. The application is predicated on the principal ground that the court had in its judgment of 8th October 2013 made reference to maintenance of the respondent and the issues of the marriage, but failed to specify the amount of maintenance. It stated that the failure to specify the amount of maintenance is an error apparent on the face of the record and a ground for review. It argued that unless the Court grants the orders sought, the respondent would suffer. The applicant states that she is unemployed and prays for maintenance at Kshs. 100,000.00 monthly.
3. The application was disposed of by way of written submissions. The respondent's submissions were filed on 21st January 2014, while those of the petitioner were filed on 19 February 2014.
4. It is submitted on behalf of the respondent that in its judgment dissolving the marriage between the petitioner and the respondent, and ordering that the petitioner shall continue to house and maintain the respondent and the children of the marriage, the court did not specify the amount of maintenance to be paid per month. It is submitted that that amounts to a glaring error on the face of the record which does not require any investigation in order to be identified. The respondent relied on the decision in *Muyodi vs. Industrial and Commercial Development Corporation and Another* (2006) 1 EA 243 at pages 246-247. It is submitted further that the omission to fix the amount of maintenance in the judgment of 8th October 2013 is a mistake visible to all. She cited the decision in *Michael Mungai vs. Ford Kenya Elections & Nominations Board & 2 Others* (2013) eKLR in which Lenaola J said that 'For one to succeed in having an order reviewed for mistake or error apparent on the record, he must demonstrate that the order contains a mistake that is there for the whole world to see.'
5. On his part, the petitioner submits that by providing a figure for maintenance and by giving a breakdown of the quantum of maintenance that she is claiming, the respondent is seeking to place new evidence before the court, and that it is entirely a new issue which cannot be brought under

the guise of an application for review. He cited the decision in *Muyodi vs. Industrial and Commercial Development Corporation and Another* (supra), where it was held that “An error which has to be established by a long drawn process of reasoning or on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record.”

6. It is his case that there are two opinions in respect of the request for maintenance, one from the respondent who is claiming the sum of Kshs. 100,000.00 per month and the other from the petitioner who is claiming that the respondent is not entitled to the same. It is contended that the respondent never attended court on the day of the hearing and never put forward any evidence in support of her claim for maintenance, and therefore the court could not have made an error when no documents or evidence was led before it in respect of the claim for the maintenance for the respondent. It is further submitted that there is no error on the face of the record as the judgment of the court is quite clear, and that if there is disagreement or dispute on the maintenance of the children, then she should press the same in the Children’s court.
7. Review of court orders and decrees is provided for in Order 45 Rule 1 of the Civil Procedure Rules, which states 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.”

8. To obtain review of an order or decree, the person moving the court under Order 45 Rule 1 is obliged to satisfy the court that she has discovered new and important matter or evidence, which, after exercise of due diligence, was not within her knowledge or could not be produced by her at the time when the decree was passed or the order made, or that there is some mistake or error apparent on the face of the record, or for any other sufficient reason.
9. I am not satisfied from what the respondent has placed before me that it has been demonstrated that there has been discovery of new and important matter or evidence which was not within her knowledge after the exercise of due diligence. Neither has the respondent shown that there is a mistake or error apparent on the face of the record, nor offered sufficient reason for the review of the decree on the terms proposed.
10. In *National Bank of Kenya Ltd vs. Ndungu Njau* Nairobi CA Civil Appeal No. 211 of 1996 the Court of Appeal stated that:-

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.

In the instant case the matters in dispute had been fully canvassed before the learned Judge. He made a conscious decision on the matters in controversy and exercised his

discretion in favour of the respondent. If he had reached a wrong conclusion of law, it could be a good ground for appeal but not for review. Otherwise we agree that the learned Judge would be sitting in Appeal on his own judgment which is not permissible in law. An issue which has been hotly contested as in this case cannot be reviewed by the same court which had adjudicated upon it.”

11. I find that there is no proper application for review before me, for the respondent has not laid a proper basis that would allow me to exercise discretion and grant her the orders she is seeking. In conclusion, I hold that the respondent has failed to satisfy me that there is an error apparent on the face of the record. Accordingly, the application for review dated 6th November, 2013 is hereby dismissed with costs.

DATED, SIGNED and DELIVERED at NAIROBI this 2ND DAY OF OCTOBER, 2015.

W. MUSYOKA

JUDGE