



REPUBLIC OF KENYA



**KENYA LAW**  
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**RMM v VNM (Civil Appeal E010 of 2023)  
[2025] KEHC 17772 (KLR) (28 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17772 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
CIVIL APPEAL E010 OF 2023  
MA ODERO, J  
NOVEMBER 28, 2025**

**BETWEEN**

**RMM ..... APPELLANT**

**AND**

**VNM ..... RESPONDENT**

**RULING**

1. The Appellant herein VNM filed a Notice of Motion dated 20<sup>th</sup> May 2025 seeking the following orders;-
  - “(a) THAT this Honourable Court may be pleased to review its judgement delivered and dated 25<sup>th</sup> April 2025 and the matter be heard again on merit.
  - (b) The Land Parcel No. Nyeri/Ndathi/1xxxx which was transferred in the name of Applicant VNM by the Lower Court in the C.M.C Divorce C. No. 17 of 2018 be ordered to remain in the name of the Applicant subject to the said trust because the Respondent/Appellant has previously sold two portions from the original Land Parcel No. Nyeri/Ndathi/6xxx, and now wants to sell nearly the whole of this land leaving the whole family destitute.
  - (c) The cost of this Application be the costs in the Cause.”
2. The application was supported by the affidavit of even date sworn by the Applicant.
3. The Respondent RMM opposed the application through the Replying Affidavits dated 27<sup>th</sup> May 2025 and 11<sup>th</sup> June 2025. The matter was canvassed by way of written submissions. The appellant filed the written submissions dated 12<sup>th</sup> June 2025, whilst the Respondent relied on the written submissions dated 24<sup>th</sup> June 2025.



## Background

4. The Appellant and the Respondent were at one time a married couple. Their union was blessed with five (5) children all of whom are now adults.
5. On 28<sup>th</sup> August 2018, the Respondent filed a petition being Divorce Petition No. 17 of 2018, seeking to have his marriage to the Appellant be dissolved.
6. On 13<sup>th</sup> September 2019 Hon. W. Kagendo, Chief Magistrate delivered a judgment in which she allowed the petition for divorce and made the following orders:-
  - “(a) The marriage between the petitioner and the Respondent be and is hereby dissolved and a decree nisi to issue.
  - (b) Land Parcel No. Nyeri/Ndathi/1xxxx measuring approximately 0.6 Hectares or thereabout be held by the Respondent in trust for the issues of the marriage.
  - (c) No orders on costs.”
7. Being aggrieved by that judgment the Applicant filed a Memorandum of Appeal dated 22<sup>nd</sup> June 2023. That appeal was heard by this court and was partially allowed vide the judgment delivered on 25<sup>th</sup> April 2025.
8. The applicant by this Notice of Motion now seeks a review of the court’s judgment dated 25<sup>th</sup> April 2025. The Respondent opposes any review of the said judgment.

## Analysis And Determination

9. I have carefully considered the application before this court the replies filed thereto as well as the written submissions filed by both parties. The only question for consideration is whether the Applicant has met the legal threshold to warrant a review of the judgment dated 25<sup>th</sup> April 2025.
10. Section 80 of the *Civil Procedure Act*, Cap 21 Laws of Kenya allows any party who considers themselves aggrieved by a ruling or judgment to file an application for review of the same.
11. Order 45(1) of the Civil Procedure Rules 2010 provides that:-
  - (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 review of judgement to the court which passed the decree or made the order without unreasonable delay.
12. From the above provisions, it is clear that section 80 of the *Civil Procedure Act* grants to courts the power of Review while Order 45 of the Civil Procedure Rules 2010, sets out the rules which govern applications for review as follow;-



- (a) The discovery of new and important matter or evidence which after the exercise of diligence, was not within the knowledge of the Applicant or could not be produced by him at the time when the Decree was passed or the Order made.
  - (b) Evidence of some mistake or error apparent on the face of the record.
  - (c) Any other sufficient reason and that the Application has to be made without unreasonable delay.
13. Regarding the discovery of new and important matter or evidence, in the case of *Rose Kaiza v Angelo Mpanju Kaiza* [2009] KECA 422 (KLR), the Court of Appeal held thus:-
- “Applications on this ground must be treated with great caution and as required by r 4(2) (b) the Court must be satisfied that the materials placed before it in accordance with the formalities of the law do prove the existence of the facts alleged. Before a review is allowed on the ground of a discovery of new evidence, it must be established that the applicant had acted with due diligence and that the existence of the evidence was not within his knowledge; where review was sought for on the ground of discovery of new evidence but it was found that the petitioner had not acted with due diligence, it is not open to the court to admit evidence on the ground of sufficient cause. It is not only the discovery of new and important evidence that entitles a party to apply for a review, but the discovery of any new and important matter which was not within the knowledge of the party when the decree was made.”
14. Similarly, the Court of Appeal in *Tokesi Mambili and others v Simion Listanga* (2004) eKLR held:-
- i. In order to obtain a review an application has to show to the satisfaction of the court that there has been discovery of new and important matter or evidence which was not within his knowledge or could not be produced at the time when the order to be reviewed was made. An applicant may have to show that there was a mistake or error apparent on the face of the record or for any other sufficient reason.
  - ii. Where the application is based on sufficient reason it is for the Court to exercise its discretion.”
15. In this case the Applicant has not alleged much less demonstrated the discovery of any new and important evidence to warrant a review of the judgment.
16. An error on the face of the record would be self-evident and would require no explanation. The Applicant herein has not even alleged much less proved the existence of any error on the face of the record.
17. Order 45 allows a court to review a judgment/ruling for any other sufficient reason. The Applicants reason for seeking a review is that she wishes the land parcel Nyeri/Ndathi/1xxxx remain in her name to hold in trust for the children. In the judgment of 25<sup>th</sup> April 2025, the Court set aside the part of the judgment of the Lower Court which vested this parcel of land in the name of the Applicant.
18. This is not a matter for review. If the Applicant is aggrieved by this part of the judgment then her remedy lies in filing an appeal in the Court of Appeal.
19. Moreover the Court did advise the Applicant to file a suit for division of matrimonial property. Instead of heeding this advice the Applicant instead decided to pursue an application for review.



20. I find that none of the grounds for review set out in Order 45 have been shown to exist. This application has no merit. The same is hereby dismissed in its entirety. Each party will meet their own costs.

**DATED IN NYERI THIS 28<sup>TH</sup> DAY OF NOVEMBER 2025.**

.....

**MAUREEN A. ODERO**

**JUDGE**

