



GKN v ENI (Civil Appeal E161 of 2022) [2025] KEHC 11617 (KLR) (29 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11617 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E161 OF 2022
HM NYAGA, J
JULY 29, 2025**

BETWEEN

GKN APPLICANT

AND

ENI RESPONDENT

RULING

1. Vide a Notice of Motion dated 20th January,2025, brought under Order 45 Rule 1 & 2 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the [Civil Procedure Act](#) and Section 15(1)(2) & (3) of the Matrimonial Causes Act, the Applicant seeks for Orders: -
 - a. Spent
 - b. That the Consent dated 28th January,2025 be adopted as an order of the Court.
 - c. That this Honourable Court be pleased to set aside the Decree nisi issued on 9th May,2024.
 - d. That this Honourable Court be pleased to review and set aside the judgement delivered on 9th May,2024 to dissolve the marriage.
 - e. That the costs be in the cause.
2. The Application is premised on the grounds on its face and supported by an affidavit sworn by the Applicant, GKN, on 24th January,2025.
3. She deponed that the Appeal herein emanated from the lower court's decision in Tigania Principal Magistrate Court in Divorce Cause no. 3 of 2022 and that she filed the same in the heat of the moment and at the height of disagreement between her and the respondent, but they never followed up on the case since the respondent returned home.
4. She asserted that several developments occurred during the pendency of the appeal and after judgment which were never brought to the attention of the court.



5. She deposed that she was reconciled with the Respondent through the intervention of the Njuri Ncheke Council of Elders, that the Respondent has since returned home where they now peacefully cohabit and as such the decree nisi has been overtaken by events.
6. It was her deposition that the issue of desertion as articulated in the judgement was untrue since the respondent used to go home even during the pendency of the Appeal.
7. She averred that there is an error apparent on the face of the record as the court indicated the Decree Nisi be made absolute within one month contrary to Section 15 of the Matrimonial Causes Act which requires a lapse of six months.
8. She deposed that she and the respondent have forgiven each other, resolved to uphold their marriage and live peacefully.
9. She thus prayed that this application be allowed in the interest of justice.

Analysis and determination.

10. Having considered the application and the supporting affidavit, I am of the considered view that the following issues stand out for determination.
 - a. Whether the consent dated 28th January, 2025 should be adopted as an order of the court.
 - b. Whether the applicant has met the threshold for the grant of orders of setting aside and review

Issue No.1

11. The provisions of Order 9 rule 9 of the Civil Procedure Rules provide as follows:

“When there is a change of Advocate, or when a party decides to act in person having previously engaged an Advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—

 - a. upon an application with notice to all the parties; or
 - b. upon a consent filed between the outgoing Advocate and the proposed incoming Advocate or party intending to act in person as the case may be”
12. It is clear therefore from the above provision that for any change of Advocates after judgment has been entered to be effected, then there must be an order of the Court upon an application with notice to all parties or upon a consent filed between the outgoing Advocate and the proposed incoming Advocate.
13. I have looked at the consent in question. It is a duly executed between the outgoing advocate, Otieno C. & Co. Advocates and the incoming advocate, Mukaria Muriungi & Co. Advocates. In light of the above, I hereby grant the firm of Mukaria Muriungi & Co Advocates leave to represent the Applicant.

Issue No.2

14. The law that governs applications for review is set out in Section 80 of the *Civil Procedure Act* and on Order 45 Rule 1 of the Civil Procedure Rules.
15. Section 80 of the *Civil Procedure Act* provides that: -

Any person who considers himself aggrieved-



- a. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
 - b. by a decree or order from which no appeal is allowed by this Act may apply for a review of judgment to the court which passed the decree or order, and the court make such order thereon as it thinks fit.
16. Order 45 Rule 1 of the Civil Procedure Rules provides that: -
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 the judgment to the court which passed the decree or made the order without unreasonable delay.
17. In Republic Vs Public Procurement Administrative Review Board & 2 Others (2018) eKLR the Court held that: -
“Section 80 gives the power of review and Order 45 sets out the rules. These rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review.”
18. The provisions of Order 45 were restated by the Court of Appeal in the case of Benjoh Amalgamated Limited & Another Vs Kenya Commercial Bank Limited (2014) eKLR where the Court held that: -
“In the High Court both the *Civil Procedure Act* in section 80 and the Civil Procedure Rules in Order 45 Rule 1 confer on the court power to review. Rule 1 of order 45 shows the circumstances in which such review would be considered ranging from discovery of new and important matter or mistake or error apparent on the face of the record or any other sufficient reason but section 80 gives the High court greater amplitude for review.”
19. It then follows that Order 45 provides for three circumstances under which an order for review can be made. The applicant must demonstrate to the court that there has been 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. Secondly, the applicant must demonstrate to the court that there has some mistake or error apparent on the face of the record. The third ground for review is worded broadly; an application for review can be made for any other sufficient reason.
20. No error on the face of the record has been shown by the Applicant. In her affidavit the Applicant cited Section 15 of the repealed Matrimonial Cases and deponed that there was an error on the face of record as court directed the decree nisi be made absolute within 1 month instead of 6 months. It should be noted that this is not an error on the face of record. Moreover, Rule 20(2) of the Matrimonial Proceedings Rules, 2020 expressly provides that a decree absolute shall issue thirty days after the issuance of a decree nisi, unless the court otherwise directs.



21. The Applicant's claim that the parties have since reconciled does not constitute a new or compelling ground to justify a review. Notably, the issue of reconciliation had already been raised by the Applicant but was unsupported by any evidence at the time this Court rendered its judgment on 9th May, 2025. While reconciliation may be relevant in personal relationships, it does not satisfy the legal threshold for review as set out under Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules.
22. In view of the foregoing, the application succeeds only with respect to Prayer no. b. Prayer no. c and d are dismissed with no order as to costs.
23. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MERU THIS 29TH DAY OF JULY, 2025.

H. M. NYAGA,

JUDGE.

