



REPUBLIC OF KENYA



KENYA LAW

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JKK v JNM (Matrimonial Cause E003 of 2023) [2025] KEHC 6212 (KLR) (15 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6212 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MATRIMONIAL CAUSE E003 OF 2023**

HM NYAGA, J

MAY 15, 2025

BETWEEN

JKK PLAINTIFF

AND

JNM DEFENDANT

RULING

1. Coming for determination is the application dated 2/5/2024, which seeks the following orders:-
 - a. Spent
 - b. That this honourable court be pleased to stay the ruling and order issued by the honourable court on 30/11/23 pending the hearing and determination of this application.
 - c. That upon inter-partes hearing herein the honourable court be pleased to set aside the orders and its ruling of 30th November, 2023.
 - d. That the defendant/applicant be granted leave to file his replying affidavit out of time in terms of the draft replying affidavit herein attached.
 - e. That costs of this application be in the cause.
2. The application is supported by the grounds set out in the face of it and the affidavit sworn by the Applicant on even date.
3. In a nutshell, the applicant states that he has never been notified of the existence of this case and only learnt of it when he went to check on the status of a loan that he had applied for. That the respondent prosecuted the application in his absence and obtained the orders I question.
4. The applicant further avers that the respondent had filed a suit in Maua Chief Magistrate's Court where she sought similar orders and the court dismissed her application.



5. It is further averred that the affidavit of service sworn by the process server contains false averments.
6. The applicant further avers that the respondent has a habit of pushing court whenever she seeks to obtain finance to boost his business. That he has also registered some properties in the name of the respondent. That the respondent is residing in the matrimonial home, which he only visits occasionally.
7. The applicant further avers that he has a good defence to the application and the Cause and he would be given a chance to defend himself. That it is not fair to stop him from utilizing his property which he has worked for his entire life.
8. In response, the respondent filed a replying affidavit sworn on 14/6/2024. The respondent avers that the applicant was duly served with the pleadings but declined to sign for them, and also deliberately failed to attend court while aware of the date. That the applicant has not demonstrated what loss he will suffer if the inhibition orders remain in force, and the same are there purposely to preserve the family property.
9. The respondent further avers that the case filed in Maua Court was distinct from the present cause. The respondent urged the court to dismiss the application.
10. The parties were directed to file submissions, at the time of writing their ruling, only the applicant had complied with those directions. For the applicant, it is submitted that there were no service of the pleadings and the applicant was denied a chance to defend the Cause.
11. It is further submitted that the respondent still has an active file before Maua Chief Magistrates Court, being ELC Case No. E037 of 2023 and when she failed to get orders in that case, she rushed to this court.
12. It is further submitted that this court has a discretion to set aside the orders in question. Cited was the case of Mbogo – Vs- Shah (1968) 1 EA 93, and that of Rahman – Vs- Rahman (1999) LTL 26/11/9.
13. The applicant further submitted that since the failure to file a response was not intentional, the court ought to oversee its discretion in his favour. That the applicant stands to suffer no harm as he has never sold any property, despite the fact that the court at Maua refused to grant orders of inhibition.

It is further submitted that the court ought to consider his defence on merit even if the court was to find that the ex-parte orders were lawfully entered. Cited was the case of Tree Shade Motor Limited – vs- DT Dobie Co. Ltd. [CA 38/1998](#).
14. There is no dispute that this matter proceeded in the absence of the applicant. However, that he was never served with the pleadings and hearing notice. This court has the power to set aside the orders, in exercise of such powers, the court has to consider whether the orders were regularly issued or not.
15. In the latter case, the court has to set the orders aside ex-debit sustenance. In the formal case, the matter master with the discretionary power of the court. This position was set out in Shah -vs- Mbogo, where it was held:-

“Applying the principle that the Courts discretion to set aside an ex-parte judgment is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error, but not to assist a person who has deliberately sought (whether by evasion or otherwise) to obstruct or delay the cause of justice, the motion should be refused”



16. In the instant case, there is really nothing to show that the service was not effected. The applicant has not sought to have the process serve cross-examined. As such, it is difficult to find that there was no service. The burden was upon the applicant to prove that there was no service. That being the case, the court finds that the orders were issued regularly/lawfully.
17. As stated, the matter now rests on the discretion of the court.
18. I have considered the circumstances, of the case and the issues raised by the applicant. One issue is that the respondent has an active file at Maua Court regarding the same property. This is a valid response and defence to the claim herein.
19. Further, the applicant avers that the respondent has failed to disclose 3 properties that are registered in her name. That some properties in question were acquired before the marriage, hence do not fall under the *Matrimonial Property Act*.
20. The courts duty is to do substantive justice. It would not be right to condemn a party unheard. This is especially so in a personal matter like this one.
21. Having considered the matter, court is inclined to grant the following orders: -
 - a. The orders of 30/11/2023, are set side, but the applicant may seek leave of the court to utilize any property as security for a loan.
 - b. The applicant shall file a response to the application within 14 days of this ruling.
 - c. The respondent has leave to file a supplementary affidavit within 14 days of service of the response.
 - d. The application to be listed for directions on a date that shall be given shortly.

DATED, SIGNED & DELIVERED AT MERU THIS 15TH DAY OF MAY, 2025.

H.M. NYAGA

JUDGE

