



**NKC v EWK (Matrimonial Cause 2 of 2023) [2025] KEHC 6978 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6978 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
MATRIMONIAL CAUSE 2 OF 2023  
FN MUCHEMI, J  
MAY 22, 2025**

**BETWEEN**

**NKC ..... APPLICANT**

**AND**

**EWK ..... RESPONDENT**

**RULING**

**Brief facts**

1. This application for determination dated 12<sup>th</sup> March 2025 seeks for orders of directions on the implementation of the judgment. The application also seeks for orders to compel the respondent to furnish sales agreements to the applicant’s counsel and the court in respect of properties she disposed for the purposes of valuation.
2. In opposition to the application, the respondent filed a replying affidavit dated 26<sup>th</sup> April 2025.

**The Petitioner/Applicant’s Case**

3. The petitioner states that the honourable court delivered its judgment on 20/8/2024 directing the apportionment of the matrimonial property at the ratio of 40:60. The honourable court further directed that the matrimonial home vests with the respondent but insisted that the ratio of 40:60 is maintained. Furthermore the court held in its judgment that in the event that any properties had been sold, each was to be valued by a valuer agreed on by the parties based on the market value at the time of sale and the party who sold shall pay the other party his/her share in the ratio declared in the judgment.
4. The petitioner argues that the execution of the judgment has been difficult owing to the various interpretations of the judgment on what really amounts to 40:60 ratio and the respondent’s laxity in executing the judgment. The petitioner states that in trying to execute the judgment and settle the matter amicably, his advocates wrote to the respondent’s advocates asking them to sign deeds of transfer



of the matrimonial properties within a period of four days to avoid execution which they responded and requested for 14 days to respond effectively.

5. The petitioner states that the respondent's advocates thereafter responded and stated that it was him who failed to comply with the judgment by his continued stay in the matrimonial home and that the respondent has no obligation to sign the transfer forms.
6. The petitioner further states that he wrote another letter to the respondent requesting her to furnish his advocates with sales agreements for the sale of the suit properties for purposes of engaging a valuer to which the respondent did not respond thus preventing the execution of the judgment. In the circumstances, the petitioner prays that the court give a clear interpretation of the judgment and what amounts to the ratio if 40:60 to facilitate the execution of the same.

### **The Respondent's Case**

7. The respondent states that any application for execution after judgment ought to be brought in the prescribed format under the Civil Procedure Rules. The respondent further states that the application is tantamount to relitigating the issues already determined by the court vide its judgment dated 20<sup>th</sup> August 2024.
8. The respondent states that there has been no dispute as to the interpretation of the decree and judgment of the court. The court has already pronounced itself and therefore it cannot be used by parties as a playground to reintroduce or relitigate issues. Furthermore, the petitioner has the benefit of an advocate to interpret the judgment of the court.
9. The respondent argues that if the applicant is conflicted on any of the issues determined he ought to appeal on the same.
10. The respondent states that to date the petitioner still resides on one side on her house where she also lives with her children despite him having another family just a few metres away. Furthermore, when their marriage fell apart, the petitioner took away all the documents which were in her possession including all the documents relating to the suit properties and her original identity card. Thus, the documents the petitioner seeks the court to compel her to produce are all within his possession and he has refused to release the same to her. The respondent further states that the petitioner is holding her personal documents relating to her work and personal life. Thus if the court were to issue orders compelling her to produce the said documents, those orders would be in vain and incapable of being acted upon as she cannot produce that the petitioner is holding.
11. The respondent avers that the applicant is merely abusing the court process by filing the current application with a view of threatening her at home. Furthermore, the suit properties were disposed in the pendency of the marriage thus the petitioner is only paying lip service with his prayer for compelling orders. Consequently, the petitioner is aware of the status of the properties, the copies of the sale agreement and any other document of transfer which she had before he took them away from her.
12. The main issue for determination is whether the application has merit.

### **The Law**

#### **Whether the application has merit.**

13. Judgment in the matter was rendered on 20<sup>th</sup> August 2024 whereby the court apportioned the ratio of contribution as the petitioner 40% and respondent 60%. The court further ordered that the matrimonial home vests in the respondent as the petitioner already has another family provided that



the ratio of 40:60 is maintained. The plots Thika/gatuanyaga Nos. 3, 4, 5 and 6 all excised from LR Nos. 11407/XX, 11407/XX/X and 11407/XX/XX to be shared between the parties based on the same ratio and bearing in mind the value of the matrimonial home that vests with the respondent. The court further directed that in the event that any of the properties have been sold, each will be valued by a valuer agreed on by the parties based on the market value at the time of sale and the party who sold shall pay the other his or her ratio as declared in the judgment.

14. Thus, upon the court rendering its judgment, it became *functus officio* whereby the case cannot be reopened or relitigated. The doctrine of *functus officio* was discussed in the Supreme Court in the case of *Raila Odinga & 2 Others vs Independent Electoral & Boundaries Commission & 3 Others* [2013] eKLR cited with approval an excerpt from an article by Daniel Malan Pretorius entitled, “The origins of the *Functus Officio* Doctrine, with Special Reference to its Application in Administrative Law” (2005) 122 SALJ 832 which reads:-

The *functus officio* doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality. According to this doctrine, a person who is vested with adjudicative or decision making powers may, as a general rule, exercise those powers only once in relation to the same matter.... The principle is that once such a decision has been given, it is (subject to any right of appeal to superior body or functionary) final and conclusive. Such a decision cannot be reviewed or varied by a decision maker.

15. Similarly the Court of Appeal in *Telkom Kenya Ltd vs John Ochanda* (Suing on his behalf and on behalf of 996 former employees of Telkom Kenya Ltd [2014] eKLR held:-

*Functus officio* is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon-

The general rule that final decision of a court cannot be re-opened derives from the decision of the English Court of Appeal in *re St Nazaire Co.* (1897) 12 Ch. D 88. The basis for it was that the power to rehear was transferred by the Judicature Acts of the appellate division. The rule applied only after the formal judgment had been drawn up, issued and entered, and was subject to two exceptions.

16. Thus it is evident that the doctrine of *functus officio* bars a court from revisiting the matter on a merit based re-engagement once final judgment has been entered as this case stands herein. The petitioner seeks for orders that the respondent be ordered to produce sale agreements of the properties sold. In my considered view the valuer will not need sale agreements in valuing the properties. The period of sale of the properties is well known to the parties, and if need be, such records are available in the relevant land registration offices or companies. The court need not give any orders to that effect.
17. The judgment of the court is as clear as daylight that all the properties are shared at the ratio of 40% for the petitioner and 60% for the respondent upon valuation by a valuer agreed on by the parties. There is no interpretation to be given and parties ought to have by now executed the judgment that was delivered over nine (9) months ago.
18. Furthermore, both parties are represented by advocates who ought to advise the parties on the issues raised as well as assist them to move to execute the judgment.
19. I find no merit in this application dated 12<sup>th</sup> March 2025 and it is hereby dismissed with costs to the respondent.
20. It is hereby so ordered.



**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 22<sup>ND</sup> DAY OF MAY  
2025.**

**F. MUCHEMI**

**JUDGE**

