



**EJ v JKN (Family Originating Summons E4 of 2020)
[2025] KEHC 10070 (KLR) (7 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10070 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
FAMILY ORIGINATING SUMMONS E4 OF 2020**

JM NANG'EA, J

JULY 7, 2025

BETWEEN

EJ APPLICANT

AND

JKN RESPONDENT

RULING

1. By Notice of Motion dated 9th December 2024, the Applicant seeks reliefs as hereunder;-
 1. Spent.
 2. Spent.
 3. That this Honourable Court be pleased to vary/review its orders emanating from the Court's Judgement delivered on 19th July 2024.
 4. That consequent to prayer 3 above, this Honourable Court be pleased to order that Order 68(a) of the Judgement be reviewed to read as follows:-

“The Applicant’s share of the land at Nyota Farm being 25% thereof be excised from the said farm and be inclusive of the home built thereon and the developments thereof and which the Applicant has always occupied and called home.”

5. That the costs of this application be provided for.
2. The Applicant is the Plaintiff in this Cause she brought against her estranged husband the Respondent herein. She avers inter alia in her affidavit in support of the Motion that she had sought to appeal judgement herein delivered on 19th July 2024 and also filed an application dated 16th September 2024 praying for stay of execution of the judgement and/or ensuing decree pending determination of the appeal. She has, however, since withdrawn the intended appeal as well as the application dated



- 16th September 2024, choosing instead to bring this review application “to make the execution of the Decree clear and free from squabbles.”
3. According to the Applicant, although the court granted her 25% of the contentious property known as “Nyota Farm” at paragraph 68 (a) of its judgement aforesaid, “the Court did not clearly delineate the nature of the subdivision of the land.” She states that their matrimonial home she and her children have always resided in stands on the property. The Applicant adds that she planted trees and also rears livestock thereon.
 4. The Applicant therefore prays review of the judgement so that her 25% share of Nyota Farm includes the matrimonial home and her developments thereon to avoid further wrangles between the parties.
 5. To buttress the averments in her affidavit, the Applicant exhibited photographs showing the said matrimonial home; aerial maps identifying the extent of the land she craves and the trees she planted.
 6. The Applicant finally tells the court that the Respondent does not reside in the matrimonial home as per the evidence she had presented.
 7. The Respondent opposes the application vide affidavit in reply sworn on 17th January 2025. He deposes that in its judgement of 19th July 2024 the court found that the Applicant did not contribute towards acquisition of the subject property. Nevertheless, the court granted her 25% of the property which he says is equivalent to 10 acres.
 8. The Respondent further contends inter alia that the issue of ownership or entitlement to the matrimonial home was not an issue for determination in the impugned judgement. The court is stated to have only directed that the land in question be subdivided; “in the most economical manner.”
 9. The Respondent continues to contend that he built the house erected on the disputed property. In a bid to show that the house is his, the Respondent states that when this matter was pending judicial determination, the Applicant purchased her own piece of land on which she constructed a house. The court is told that the Applicant has even moved some of her personal items to the new house.
 10. In execution of the court’s judgement, the Respondent avers that he has already caused subdivision of the said Nyota Farm resulting in Title Nos. Nakuru/Nyota Pendle/Tregana Scheme/XXX and XXX, the former sub division containing the disputed house being his. He states that he is ready to transfer sub division No. Nakuru/Nyota Pendle/Tregana Scheme/XXX to the Applicant as per the judgement upon payment of requisite survey fees.
 11. The Respondent therefore holds the view that the application is not merited. On advice of his advocates, he asserts that there are no legal grounds for review of the court’s judgement as desired in the circumstances. The Respondent further contends that there is no evidence that it was the Applicant who planted the trees the latter has alluded to.
 12. Among other annexures to his affidavit, the Respondent exhibits photographs of the house the Applicant has allegedly built for herself.
 13. I have also seen a “Supplementary Affidavit” of the Respondent on record purporting to have been sworn on 22nd February 2025. This affidavit is disregarded as it is filed irregularly without leave.
 14. Learned Counsel for the parties filed written submissions on the application which I have perused against the rival affidavit evidence.
 15. It is common ground that a homestead stands on the contested property (Nyota Farm). The court did not specify who between the parties gets the portion containing the house and any other developments



thereon. The court only directed that the land be sub divided “in the most economical manner,” after which the Respondent would transfer the Applicant’s portion to her.

16. In my view the omission is not a mistake or error apparent on the face of the record contemplated by the law as a ground for review of a judgement, decree or order. Neither is the omission “any other sufficient reason” meriting review. My brother (Justice H. M. Nyaga) consciously framed his orders after evaluating the parties evidence, submissions and the applicable law. Whereas Order 45 of the Civil Procedure Rules 2010 permits the court to order review on any of the above stated grounds, the Applicant has not laid a proper and lawful basis.
17. In Civil Appeal No. 2111 of 1996 (National Bank of Kenya Limited v Ndung’u Njau) the Court of Appeal exhorted that any error in a court’s order, judgement or decree that is sought to be corrected must be self evident and not require elaborate arguments to be established. Furthermore, the superior court held that review cannot be ordered on the ground that a diferent Judge could have reached a different decision or on the basis of an incorrect exposition of the law.
18. The remedy of the review as prayed is not therefore available to the Applicant and the application is dismissed. In light of the past relationships of the parties as spouses, no order is made as to costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY 7TH DAY OF JULY, 2025.

J. M. NANG’EA , JUDGE.

In the presence of:

Ms Kinya Advocate for Mr. Mugambi Advocate for the Applicant

Mr. Lang’at Advocate for the Respondent

Court Assistant (Jeniffer)

J. M. NANG’EA, JUDGE.

