



MNN & another v ENK & another (Civil Case 31 of 2014 & Divorce Cause 5 of 2015 (Consolidated)) [2024] KEHC 2444 (KLR) (Family) (7 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2444 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL CASE 31 OF 2014 & DIVORCE CAUSE 5 OF 2015 (CONSOLIDATED)
HK CHEMITEI, J
MARCH 7, 2024**

BETWEEN

MNN APPLICANT

AND

ENK RESPONDENT

**AS CONSOLIDATED WITH
DIVORCE CAUSE 5 OF 2015**

BETWEEN

ENK PETITIONER

AND

MNN RESPONDENT

RULING

1. In the Applicant’s application dated 20th April 2023 he prays for an order that the court be pleased to set aside the order issued on 1st November 2019 terminating the proceedings in the suit hereof and or ordering the court file hereof as closed and reinstate the same for purposes of proceedings.
2. The Application is based on the grounds thereof and the sworn affidavit of Evans Wachira counsel for the applicant sworn on the same day.
3. The Applicant contents that after this court disallowed his case he proceeded to the Court of Appeal *vide* case Number 559 of 2019. The said court delivered its judgement on 3rd December 2021.



4. That while the said appeal process was pending this court closed this file on 1st of November 2019 which according to him was erroneous for the reason that the same was still active. The said closure has made him unable to execute the decree of the Court of Appeal in which it ordered the suit property to be valued and gets 90% as the respondent gets 10%.
5. For the above reason the Applicant asks this court to find that this suit has not been closed as the decree stated above has not been finalised.
6. The Respondent on her part has opposed the application vide her grounds of opposition dated 8th May 2023 in which she argued that this court is *functus officio* and therefore lacks jurisdiction to reopen the matter; that the Court of Appeal did not remit the matter to this court for execution; that the same is sub judice in view of the matter number Misc. App. E455 of 2021; it is a backdoor way of evicting the respondent before complying with the decree of the Court of Appeal.
7. The parties then proceeded to file their written submissions which the court has extensively perused together with cited authorities.

Analysis and determination.

8. It appears that this court when conducting its case audit dismissed and or closed this matter on 1st November 2019. The same does not feature nonetheless on the courts record.
9. I have perused the application, the grounds of opposition and the submissions and I do not find any prejudice to be suffered by the Respondent if the application is allowed. It is not true that this court is *functus officio*. It was submitted by both parties that as the Court of Appeal does not have original jurisdiction, this court acts as its executing arm.
10. The orders it gave were very specific and can only be executed by this court. I do not think it requires any varying or at all. The only way to execute the same is through this courts and it cannot be done without reopening the matter.
11. The Respondent's submission that the decree ought to be executed in the manner directed by the Court of Appeal holds water. If it is true that a valuation ought to be carried before the issue of 90:10 ratios is determined, then it has to be done.
12. In view of the above finding the application is otherwise allowed and the matter is reopened afresh to allow the parties execute the Court of Appeal decree and any or further orders from this court.
13. The application dated 17th April 2023 ought to be set down for hearing in view of the above orders.
14. Costs shall be in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 7TH DAY OF MARCH 2024.

H K CHEMITEI

JUDGE

