



**JWC v LKM (Matrimonial Cause 4 of 2016) [2023] KEHC 18866 (KLR) (15 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18866 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MATRIMONIAL CAUSE 4 OF 2016  
HK CHEMITEI, J  
JUNE 15, 2023**

**BETWEEN**

**JWC ..... PLAINTIFF**

**AND**

**LKM ..... DEFENDANT**

**RULING**

1. In his Notice of Motion dated July 12, 2022 the applicant prays for the following orders, that;
  - (a) There be stay of the judgement delivered by this court on July 24, 2019.
  - (b) The court does review the above judgement on the acreage the parties will get in land parcel number Nakuru/Rare/Gichobo/XXX given the land measures 1.088 ha (2.6) acres and the court judgement awarded the applicant 2 acres and 1 acre to the respondent.
  - (c) The court be pleased to set aside the judgement delivered on July 24, 2019 given the parcel Nakuru/Rare/Gichobo/XX is ancestral land passed from the applicant's father to the applicant and thus not available for subdivision between the applicant and the respondent.
  - (d) In the alternative the applicant be given a period of one year to move out of the matrimonial home.
  - (e) The honourable court set aside the judgement as the respondent's contribution to the purchase of the land Nakuru/Rare/Gichobo /XX was only Kshs 17,000 out of the Kshs 150,000 purchase price which i paid and the most the applicant is entitled to is Kshs 540,000 not Kshs 1,000,000.
  - (f) That the honourable court grants the applicant a one-year period to vacate the matrimonial home and carry with him some household goods and personal effects.
  - (g) That the court does issue injunctive orders to stop the respondent abusing the applicant.



2. The application is supported by the sworn affidavit of the applicant and the grounds on the face of the application.
3. The application has been opposed by the respondent vide her replying affidavit dated July 19, 2022.
4. The issues raised by the applicant are not difficult to appreciate as can be deduced from his affidavit. He is asking this court to majorly review the judgement dated July 24, 2019 as the suit land namely Nakuru /Rare /Gichobo /XX does not measure the three acres as indicated in the judgement. He has attached a copy of the title.
5. It is clear that the court has awarded the applicant two acres and one acre to the respondent.
6. He has also prayed that the judgement be reviewed in other issues basically the payments of the sum of Kshs 1,000,000 as well as the fact that the above land was inherited from his father and it cannot therefore be termed, matrimonial.
7. The respondent reply basically states that the judgement cannot be reviewed as there was nothing new and at any rate he was all along in custody of the title to the land and therefore he ought to have known its size.
8. The other prayers were not new and cannot be subject to review. She accused the applicant of squandering his chance when he was married to another woman and that the other household items were purchased by her and were to benefit their children.
9. The court directed the parties to file written submissions which they have complied. The court has perused the same and does not need to reproduce them here save to state that they each gravitate around the issues raised in the rival affidavits.
10. Order 45 of the *Civil Procedure Rules* provides the grounds the court ought to consider in such an application. One of the grounds is when there is an error on record which essentially should be self-evident and does not require elaborate explanation. In other words, it does not require any other evidence.
11. Looking at the issues raised by the applicant I find that the only error which this worth consideration is the acreage of the parcel of land. The size is not disputed by the respondent and I presumed that when the court made its decision it presumed that the same was measuring three acres. This was an error which Order 45 of the Civil procedure rules anticipated and allowed correction by the trial court.
12. The other issues about the contribution made by the parties towards the purchase of the matrimonial property as rightfully submitted by the respondent were within the knowledge of the parties and specifically the applicant and ought to have been raised during trial. In other words, they are not new.
13. The request to move out of the matrimonial home within the next one year for instance is not feasible for the simple reason that the applicant has had over four years after the decree of the court to organise himself. This goes as well with the other household items he desires to move with.
14. In the premises i think it is only fair to tinker with the issue of the acreage by reviewing the acreages to almost what the parties were given by the court.
15. In view of this the applicant shall get 1.8 acres and the respondent 0.8 acres out of the said land parcel number Nakuru/Rare/Gichobo/xxx. The portions that will cover the road portion, if any, for purposes of access shall be excised from that of the applicant and not the respondent.
16. The decree of this court be reviewed in terms of the above directions. The other prayers are disallowed.



17. Each party shall bear own costs.

**DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 15TH DAY OF JUNE 2023.**

**H. K. CHEMITEI**

**JUDGE**

