



**UC v NNK (Family Cause E013 of 2021)
[2025] KEHC 18553 (KLR) (Family) (16 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18553 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

FAMILY CAUSE E013 OF 2021

EKO OGOLA, J

DECEMBER 16, 2025

BETWEEN

UC PLAINTIFF

AND

NNK DEFENDANT

RULING

1. Before this court for determination is the Defendant/applicant’s Notice of motion dated 26th April, 2024 brought pursuant to Order 51 rule 1, Order 9 rule 9, Order 22 rule 22 of the *Civil Procedure Rules, 2010*, Section 4(4) of the *Limitation of Actions Act* and Section 3A of the *Civil Procedure Act*. The applicant prays for the following orders;
 - i. Spent
 - ii. Spent
 - iii. Spent
 - iv. That the Honourable Court do issue an order directing that the transfer of Kshs. 550,000/= to the Plaintiff be contingent on the plaintiff’s compliance with the orders issued at the Nairobi Childrens Court in Children Case No. E005 of 2020 - *UC v NNK* on 19th October 2020.
 - v. That the costs of this application be in the cause.
2. The application is premised on the grounds set out on its face and supported by the affidavit of NKN of even date. In the said affidavit the applicant avers that in the judgment delivered on 1st February 2024, the Court held that the plaintiff be granted the parcel of land at Kigali Rwanda to hold for her own behalf and in trust for the two minors until they attain the age of majority, the Defendant be granted



house Number 4R, Block 5 at Kahawa Down estate in Kahawa Sukari and the Defendant to transfer Kshs. 550,000/= to the plaintiff within 90 days.

3. The Defendant deposed that there are ongoing court proceedings concerning the whereabouts of the two minors in Children's case No. E005 of 2020 - *UC v NNK*. On 19th October 2020, the Children's court granted the plaintiff interim custody for the two minors on condition barring her from leaving the country with the minors.
4. On 7th July 2021 the plaintiff failed to produce the children in Court and warrants of arrest were issued against her. He later established that the plaintiff had fled the country with the two minors in January 2021 contrary to the orders of the court. Again on 20th July 2021, the Children's court issued an order directing the plaintiff to return the children within the jurisdiction of the court before 30th August 2021. The court issued an order to the officer in charge, Interpol Nairobi to facilitate the safe return of the children to Kenya and facilitate execution of the warrants of arrest issued against the plaintiff.
5. He deposed that the condition and whereabouts of the minors is unknown and for proper implementation of the judgment, it is in the interest of justice that the two minors be availed at the Children's Court for the court to ascertain they are safe.
6. The Plaintiff through her advocate has demanded the payment of Kshs. 550,000/= as directed by this Court which he willing to settle; the claim however, for the judgment to be executed fully the plaintiff ought to first avail the minors in Kenya since they are also benefitting from the judgment. He also stated that the plaintiff cannot cherry pick which part of the judgment should be complied with as the parcel of land in Rwanda is registered under his names and he needs to effect transfer into the plaintiff's names as a trustee for the minors.
7. The Defendant deposes that the plaintiff has a record of committing contempt and has not ceased to be in contempt of court orders. This court should stay its orders directing the plaintiff to be paid Kshs. 550,000/= until he purges the contempt before the Children's court.
8. The Defendant stated that the plaintiff's advocate knows the whereabouts of the plaintiff and the minor hence as an officer of this court should be compelled to urge his client to purge the contempt before the Children's Court. He asked this court to allow the application as prayed.
9. In response to the application, the Plaintiff filed grounds of opposition dated 31st May 2024 based on the following grounds:
 - i. That the application lacks merit as it implies that the judgment of the court was given in vain.
 - ii. That the issues in Children Case No. E005 of 2020 are distinct and separate from the issues for which the judgment was delivered.
 - iii. That if there is a question of contempt of court, the same can be raised before the children's court and dealt with in that forum. The same has no relevance or bearing to the matrimonial cause for which the judgment was delivered.
 - iv. That the Plaintiff has a constitutional right of access to justice which includes the right to realize the fruits of the judgment through judicial processes of execution.
10. On 12th June 2025, this court issued direction on filing of written submission. Both parties complied and filed their respective submissions.



Determination

11. I have read through the Notice of motion application dated 26th April, 2025, the grounds of opposition, the rival submissions and the authorities cited by both parties. I find the sole issue for determination being whether the application is merited.
12. It is not in dispute that this court delivered its judgment in this matter on 1st February 2024. In the said judgment, the court ordered that the plaintiff be granted the parcel of land at Kigali Rwanda to hold on her own behalf and in trust for the two minors until they attain the age of majority. The Defendant be granted house Number 4R, Block 5 at Kahawa Down estate in Kahawa Sukari and the Defendant to transfer Kshs. 550,000/= to the plaintiff within 90 days.
13. The present application was filed to stop the Respondent from executing the judgment. The applicant has raised several issues in his application. Among the issues raised are that the Respondent is in contempt of the orders issued in Children’s Case No. E005 of 2020, where the Children’s Court directed that the minors should not be removed from the jurisdiction and subsequently ordered their return. The Applicant has invoked the doctrine that a contemnor should not be heard until they purge the contempt.
14. It is important to note that the Children’s Court is a specialised court with exclusive jurisdiction to enforce, punish for contempt, and make all necessary orders relating to custody, care, control, and return of children. The Children’s Court is mandated by the provision of Article 53 (2) of the [Constitution](#), Section 4 (2) and Section 91 of the [Children Act](#) on the best interests of the children.
15. This Court therefore has no legal basis to suspend, halt or condition the enforcement of its own matrimonial judgment on matters falling within the exclusive jurisdiction of the Children’s Court. The two cases are distinct as the present one relates to matrimonial property while the other relates to child protection.
16. In my considered view, the alleged contempt does not relate to the execution of this Court’s judgment delivered on 1st February 2024, nor does it impede its ability to enforce its decision. The contempt concerns a separate case and a different subject matter.
17. The applicant has not invoked Order 42 rule 6 of the [Civil Procedure Rules](#), and even if the Court were to treat the instant application as one seeking stay of execution, the mandatory conditions have not been satisfied to enable this court exercise its discretion. Order 42 rule 6 provides that;

“No order for stay of execution shall be made under subrule (1) unless—

 - a. the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - b. such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”
18. In the case of [Kiplagat Kotut v Rose Jebor Kipngok](#) [2015] eKLR, the Court held that ;

“It follows therefore that for the applicant to succeed for stay of execution pending appeal must satisfy the above three conditions as envisaged under order 42 Rule 6; these are one the application being brought without undue delay, two, the applicant must satisfy the court that substantial loss may result to the unless stay of execution is ordered and three, the



applicant is required to furnish the security for the due performance of the decree. All the prerequisites in Order 42 Rule 6 of the Civil Procedure Rules are as important and must be considered in an inextricable manner.”

19. The Applicant has not met the legal threshold for granting stay, variation or conditional execution of the judgment in this matter.
20. What I gather from the applicant’s application is that the Applicant seeks to fundamentally vary the judgment by introducing a new condition that the Court did not impose in its final decree. A court becomes *functus officio* after delivering judgment except for correction of errors or clarifications under Section 99 of the Civil Procedure Act. The Court cannot re-open or re-write its judgment to impose new conditions.
21. In the end, this court finds that the application improperly seeks to tie execution of a matrimonial property judgment to alleged contempt in a separate children’s matter. In my view the application is an attempt to indirectly revisit, vary or suspend a final decree of this Court, contrary to the doctrine of *functus officio*.
22. Accordingly, the Notice of Motion application dated 26th April 2024 has no merit and it is hereby dismissed in its entirety.
23. Costs shall be in the cause.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 16TH DAY OF DECEMBER, 2025.

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E. K. OGOLA

JUDGE

In the presence of:

M/s Achole holding brief Odhiambo.....for the Plaintiff

M/s Wangoi holding brief Mungai.....for the Defendant

Gisiele M.....Court Assistant

