



**AWK v AWK (Matrimonial Cause 12 of 2018)
[2026] KEHC 5959 (KLR) (30 April 2026) (Judgment)**

Neutral citation: [2026] KEHC 5959 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MATRIMONIAL CAUSE 12 OF 2018
SM MOHOCHI, J
APRIL 30, 2026
IN THE MATTER OF THE MATRIMONIAL PROPERTY ACT 2013**

BETWEEN

AWK APPLICANT

AND

AWK RESPONDENT

JUDGMENT

1. On the 10th November 2023 this court delivered its judgment and allowed the Originating Summons by the Applicant dated 30th October, 2018 for the distribution of matrimonial property under Sections 1, 1A, 3, 3A of the [Civil Procedure Act](#) and Section 9, 12, 14 and 17 of the [Matrimonial Property Act](#) 2013. The Relief granted was that;
 - a. That the applicant is entitled to half share beneficial interest in the property known as Nakuru Municipality Block 15/177
 - b. That the said property shall be shared based on valuation report filed in court prepared by valuer agreed by both parties and the proceeds be shared equally between the Applicant and Respondent.
 - c. In the alternative, either party shall buy out the beneficial interest of the other in the said property in monetary terms.
 - d. There shall be no orders as to costs.
2. The Respondent aggrieved with the judgment moved to Appeal and sought a stay of execution of judgment/decreed that was ultimately allowed on the 19th March 2024.



3. The Applicant has now moved the court in its Notice of Motion dated 3rd November 2025 seeking inter alia the following reliefs;
 - a. Spent
 - b. Spent
 - c. That this Honourable court be pleased to review its judgment delivered on 10 November, 2023 and decree issued on 15 May, 2024 to include an alternative order that "THAT the property known as Nakuru/Municipality Block XXXX be surveyed and subdivided into equal halves and title deeds issued to respective parties.
 - d. That this Honourable court be pleased to review the judgment delivered on 10 November, 2023 and decree issued on the 15th May, 2024 to Include an order that all proceeds of rental income from property known as Nakuru/Municipality Block XXXX having rental units with occupants be deposited in an escrow account, pending subdivision, transfer and issuance of title deeds Income which will then be shared equally between the applicant and respondent.
 - e. That the Honorable court be pleased to issue an order directing the respondent to account for the proceeds of rental units on the property known as Nakuru/Municipality Block XXXX from January, 2018 to date.
 - f. Costs of this application be provided for.
4. The Applicant further filed a supplementary affidavit dated 29 October, 2025. The Court had directed the Application be disposed off by way of filed written submissions and despite the opportunity the Application was undefended for want of response.
5. The Applicant on his part filed his written submissions dated 3rd November urging that the court allows the same as unopposed.
6. The Applicant submits that despite a valuation being done and filed in court the Respondent has strained the process and it has become practically impossible to implement the decree since she is in occupation of the property.
7. That further there is a second valuation report prepared and advertisement made twice but still the property has not been able to be sold due to the presence of the Respondent on the premises which has made it Impossible for potential purchasers to access and Inspect the property to be purchased.
8. That the Applicant has since caused two auction notices to be put on circulating dailies but it has been in vain for the said property to attract any sale.
9. That, being that the Respondent is in occupation of the property, it would be unable to have the same sold and as such it is reasonable that the property be surveyed and subdivided in equal halves and each party be given their respective titles.
10. That further the Respondent has all along been enjoying the rent proceeds from the rental unit since the year 2018 to the exclusion of the Applicant. It is thus fair and just that the Respondent be ordered to account for the rent proceeds and moving forward the proceeds be deposited in an account then later own be shared equally after conclusion of subdivision of the said property.
11. That as at the time of filing the suit to issuance of the decree, it wasn't in the knowledge of the Applicant that the presence of the Respondent on the property will make it unable to have the same sold.



12. That, the Respondent has made a proposal to the Applicant herein to have the property sub-divided into equal halves and each party to get their respective title a proposal which both parties are agreeable to.
13. That, the property herein has occupants who have been paying rent and continue to pay rent to the Respondent since 2018 and the Respondent is not benefiting in any way from the proceeds of the rental income collected and therefore it is proper that the said judgment is reviewed to allow the Applicant benefit for the rental income that continues to be generated.
14. In conclusion, the Applicant humbly submit that, the application herein is meritorious and bearing in mind the current set of facts as enumerated above the Judgment and decree issued on 10th November, 2023 and 15th May, 2024 respectively ought to be reviewed to Include the prayers sought by the Applicant.

Analysis and Determination

15. In my considered view the following issue for determination arises;
 - i. Whether the Application satisfies the conditions warranting review of judgment?
16. Section 80 of the *Civil Procedure Act* Cap 21 provides as follows: -

“ Any person who considers himself aggrieved—

 - a. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
 - b. by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”
17. Order 45 Rule 1 of the Civil Procedure Rules, 2010 provides as follows: -

“ 1.

 - (1) Any person considering himself aggrieved—
 1. by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 2. by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the



court which passed the decree or made the order without unreasonable delay.”

18. In Republic v Public Procurement Administrative Review Board & 2 others [2018] eKLR it was held: -

“ 12. Section 80 gives the power of review and Order 45 sets out the rules. The rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review limiting it to the following grounds; (a) discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or; (b) on account of some mistake or error apparent on the face of the record, or (c) for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without un reasonable delay.”

19. In Pancras T. Swai v Kenya Breweries Limited [2014] eKLR the Court of Appeal held: -

“Order 44 rule 1 (now Order 45 rule 1 in the 2010 Civil Procedure Rules) gave the trial Court discretionary power to allow review on the three limbs therein stated or “for any sufficient reason.”... As repeatedly pointed out in various decisions of this Court, the words, “for any sufficient reason” must be viewed in the context firstly of Section 80 of the Civil Procedure Act, Cap 21, which confers an unfettered right to apply for review and secondly on the current jurisprudential thinking that the words need not be analogous with the other grounds specified in the order.”

20. The Court of Appeal in the aforementioned Pancras T Swai’s case also cited with approval the case of Sarder Mohamed v. Charan Singh Nand Sing and Another (1959) EA 793 where the High Court held that Section 80 of the Civil Procedure Act conferred an unfettered discretion in the Court to make such order as it thinks fit on review and that the omission of any qualifying words in the Section was deliberate.

21. In the case of Shanzu Investments Limited v. Commissioner for Lands (Civil Appeal No. 100 of 1993) the Court of appeal upheld its earlier decision in Wangechi Kimata & Another Vs. Charan Singh (C.A. No. 80 of 1985) (unreported) where it was held: -

“ Any other sufficient reason need not be analogous with the other grounds set out in the rule because such restriction would be a clog on the unfettered right given to the Court by Section 80 of the Civil Procedure Act; and that the other grounds set out in the rule did not in themselves form a genus or class of things which the third general head could be said to be analogous.”

22. I have considered the pleadings noting that the Applicant claims that the execution of the judgment cannot occur as the subject property is occupied by the Respondent frustrating intended auctions, this allegation has not been fortified by evidence and in any case by the time the petition was filed the Respondent had been in occupation.

23. I am equally functus officio to the extent of making any determinations relating to rent proceeds. If the Applicant had been aggrieved on this issue the best course of action would have been to file an Appeal.

24. Thirdly, the court allowed stay to enable the 79 years old Respondent file and argue her Appeal before the Court of Appeal; a stay order still in force yet to be vacated.



25. Nothing has been presented showcasing any discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason.
26. From the foregoing I am unsatisfied that the Applicant has satisfies the court on the conditions warranting review of judgment and as such I find the Application dated 3rd November 2025 to be without merit and accordingly dismiss the same.
27. I shall not grant costs of the Application as the same was undefended.
- It is so ordered.

DATED, SIGNED AND DELIVERED AT NAKURU

ON THIS 30TH DAY OF APRIL 2026.

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MOHOCHI S.M.

JUDGE OF THE HIGH COURT.

