



**LAO v HWO (Matrimonial Cause E001 of 2023)  
[2025] KEHC 11693 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11693 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
MATRIMONIAL CAUSE E001 OF 2023  
WM MUSYOKA, J  
JULY 31, 2025**

**BETWEEN**

**LAO ..... APPLICANT**

**AND**

**HWO ..... RESPONDENT**

**RULING**

1. I delivered a judgment herein on 26<sup>th</sup> March 2025, where I determined the originating summons herein, by distributing the property between the 2 parties herein equally.
2. The defendant has come back to court, with an application, dated 11<sup>th</sup> April 2025, inviting me to set aside or review that judgement of 26<sup>th</sup> March 2025, arguing that I had been mistaken, by concluding that the plaintiff, had cleared a loan taken by the defendant, to acquire and develop the property, the subject of the division of matrimonial property. Secondly, it is argued that the property is ancestral, and, therefore, not matrimonial, making it unavailable for division.
3. The plaintiff reacted by filing a notice of preliminary objection, on the basis that I no longer had jurisdiction, for I was functus officio once I rendered my judgement on 26<sup>th</sup> March 2025.
4. I directed, on 14<sup>th</sup> May 2025, that the said application, dated 11<sup>th</sup> April 2025, and the response to it, be canvassed by way of written submissions.
5. Both sides have complied by filing and exchanging written submissions.
6. Let me start with the issue raised in the preliminary objection, for it goes to jurisdiction.
7. Unless the law has changed recently, and I am not aware, section 80, *Civil Procedure Act*, Cap 21, Laws of Kenya, and Order 45, *Civil Procedure Rules*, provide for review of orders and decrees. These provisions empower the court to revisit its decision, based on error on the face of the record, discovery of new evidence which was not available at the time the decision was being made, and for any other



sufficient reason. In view of these provisions there can be no legal basis for arguing that I am functus officio, and that I cannot revisit my orders of 26<sup>th</sup> March 2025, in the manner suggested in the application, dated 11<sup>th</sup> April 2025. Setting aside is also available, where there are glitches, occasioned by inadvertences on the part of the parties.

8. On the merits of the said application, let me start by stating that the defendant is harvesting the fruits of what he sowed at the build up to the trial. I talked about in the judgement. The obsession of legal practitioners, of opting to go for the easy way out, in terms of written submissions, to avoid the rigorous or hustles of a full trial. Written submissions are a wonderful idea, for simple straight forward, matters, but it is foolhardy for highly contested and emotional matters, such as division of matrimonial property. For such, written submissions are a no, no. The issues, that are now being raised, are matters that the defendant should have cross-examined the plaintiff on, and in respect of which he should have led his own evidence on, around who took out the disputed loan, and who repaid it, and who did not, and also about the said property, in terms of whether it was matrimonial property or ancestral property that the defendant acquired through succession.
9. On the loan, the issue was not about the repaying of a loan, but payment to a seller of the subject property and development of the property. The plaintiff averred that she paid the purchase price in full and funded most of the construction. She filed documents to support her assertions. The defendant also filed his own papers to explain himself. I evaluated the material, and, on a balance of probability, agreed with the plaintiff. If the defendant feels that I was wrong in doing so, then he should challenge my conclusions on appeal. Such is not for re-visiting by way of review. Review is on process, not substance. The defendant is not accusing me of going wrong on procedure, but on my evaluation of the substance of the documents presented. That is stuff for appeal not review. Perhaps, it would have helped his case if he had opted for viva voce evidence, at trial, for that would have afforded him an opportunity, not only to challenge the plaintiff, but to offer his own explanations himself, using his own mouth on the material, instead of leaving it solely to his Advocates.
10. On the said property being ancestral, as opposed to matrimonial, the court only acts on what has been placed before it. The case by the defendant was that he bought the property using his own money. He placed on record 2 sale agreements. He did not raise the issue of the land being ancestral, and having been inherited, at all. He did not present any probate papers, as evidence that the property had been subject to succession proceedings, and the same was devolved to him in the proceedings. Even in this instant application, I see no probate papers, but I see a copy of a sale agreement.
11. I see no basis upon which to set aside or review the orders made in my judgement of 26<sup>th</sup> March 2025. I, accordingly, dismiss the application, dated 11<sup>th</sup> April 2025, with costs. Orders accordingly.

**DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, ON THIS 31<sup>ST</sup> DAY OF JULY 2025.**

**WM MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Omeri, instructed by Omeri & Associates, for the plaintiff.

Mr. Ouma, instructed by BM Ouma & Company, Advocates for the defendant.

