



**KLWH v JHD & another (Divorce Cause 94 of 2006)
[2024] KEHC 4016 (KLR) (Family) (25 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4016 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
DIVORCE CAUSE 94 OF 2006
HK CHEMITEI, J
APRIL 25, 2024**

BETWEEN

KLWH PETITIONER

AND

JHD 1ST RESPONDENT

ANK 2ND RESPONDENT

RULING

1. In her application dated 14th June 2023 the applicant prays for the following orders that:
 - (a) The Petitioner be allowed to reopen its case.
 - (b) The Petitioner be granted leave to file documents relating to the matrimonial properties and give evidence on them and the documents filed by the Respondent pursuant to the court order of 8th October 2018.
 - (c) This court do make such or further orders as it deems fit.
2. The application is based on the grounds thereof and the Applicants sworn affidavit dated the same date.
3. In a nutshell the Applicant avers that she testified and closed her case on 30th January 2015 and what was pending was simply the Respondent’s case. She however stated that there are vital documents relating to the matrimonial property which she wishes to rely on hence the need to have the case reopened.
4. At the same time, she said that since the Respondent was allowed to file further documents on 8th October 2018 and was to be recalled, she wishes to be cross examined on the said documents by the Respondent.



5. Essentially she deposes that the documents filed were not available by the time she was being cross examined. It was therefore necessary and imperative to have the matter reopened.
6. Vide his replying affidavit sworn on 29th June 2023 the Respondent has vehemently opposed the application. He said that the same was an abuse of the court process and meant to delay this matter which has been in court for over 17 years.
7. He deposed that the Applicant was granted chance by the court to be cross examined but she decided to absent herself from the court on the material day when she went to Canada.
8. That the documents she is seeking to be introduced were already on record and thus there was no need to reintroduce them.
9. Further that the said documents were filed without the leave of the court and therefore the same ought to be expunged. He accused the applicant of intending all along to delay this matter.
10. The parties were directed to file their submissions which they have complied.
11. The Applicant submitted inter alia that the application was merited noting that the matter hinges on divorce which was a very emotive issue and that all facts especially the matrimonial property and how they were acquired ought to be laid bare.
12. She said that at any rate there shall be a good opportunity to have all the parties cross examined including the Respondent.
13. She relied among others on Article 48 and 50 of *the Constitution* as well as Section 146(4) of the *Evidence Act*.
14. She also relied on the case of *TKR V. JMM* (2021) eKLR and *Samwel Ketilewa v. Hfck Co LTD & another* (2015) eKLR.
15. She concluded that the issue at hand was so relevant that it was necessary for the application to be allowed.
16. On the other hand, the Respondent's submission hinged on the issues raised in the replying affidavit. He said that the Applicant was cross examined on 29th and 30th January 2015 on both the Divorce cause and the Matrimonial properties. She thereafter closed her case.
17. In this regard he submitted, the Applicant failed to utilise the opportunity by not closing her case as she knew she needed to present further evidence.
18. That the documents which she seeks the court to have them admitted were already on record by way of a "Further list of documents." All that the Applicant seems to seek according to him was to produce the same a second time.
19. The Respondent relied among others on the case of *Rubina Ahmed & 3 others V. Guardian Bank LTD & 3 others* (2019) eKLR.

Analysis and determination

20. I have carefully read the application and the response by the Respondent. I have also read the submissions on record and in particular the proceedings of the court on various dates.
21. What is evident is that this matter has taken a long time and definitely a toll on the parties. It appears to me that the challenge has been partially on the mobility of the judicial officers among others.



22. Needless to state that the main issue here is whether to allow the Applicant to introduce fresh documentary evidence.
23. The Applicant did not dispute the fact that the said documents were not similar to the ones which were on record already. I have examined the documents she intends to bring on board and I agree with the Respondent that they are similar with the once under Matrimonial Property case, in effect they are already on record.
24. At the same time the proceedings of 21st November 2019 clearly shows the Applicant's counsel confirming to the court that they have not filed any documents after his client had testified. It then appears to me that this was an afterthought.
25. In effect I think this prayer for production of further documents flies against what is already on record and is therefore disallowed.
26. On the question of recalling the Applicant I think frankly she squandered her chance on 19th September 2019 when she was to be recalled. There was no plausible reason why she decided to travel out of the country noting that this was her golden chance to ventilate what she had left out during the substantive hearing.
27. Equity does not aid the indolent and those who come to it must come with clean hands. In the case of the Applicant I do not find that she qualifies to be granted another chance. She wasted all the opportunity.
28. Nonetheless she still has the chance of dealing with the said documents if need be, when the Respondent takes the stand. For now, I think this matter must be allowed to move on.
29. Consequently, and for the reasons stated above I do not find merit in the application and the same is hereby dismissed with no order as to costs.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 25TH DAY OF APRIL 2024.

H K CHEMITEI.

JUDGE.

