

KENYA / JUDGMENT

# DKM v CN [2026] KEHC 12063 (KLR)

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COURT

High Court

BEFORE

H Namisi

CASE / FILE NUMBER

Matrimonial Cause E021 of 2024

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DKM v CN (Matrimonial Cause E021 of 2024) [2026] KEHC 12063 (KLR) (Family) (30 July 2026)  
(Ruling)

Neutral citation:

[2026] KEHC 12063 (KLR)

Republic of Kenya

In the High Court at Nairobi (Milimani Law Courts)

Family

Matrimonial Cause E021 of 2024

H Namisi, J

July 30, 2026

Between

DKM

Applicant

and

CN

Respondent

## Ruling

1. Before the Court is Notice of Motion dated 10 November 2025 seeking: i. Spent; ii. That this Honourable Court be pleased to compel the Respondent, CN, to execute all the requisite documents necessary to give full effect to the Consent dated 22 July 2024 within 7 days; iii. That the

Deputy Registrar of this Honourable Court be empowered and authorised to sign all the requisite documents that the Respondent, CN, may be required to sign to give effect to the terms of the consent dated 22 July 2024 should the Respondent fail, refuse and/or neglect to do so;iv.That the Honourable Court be pleased to issue any other further orders as it deems appropriate to ensure compliance with the consent dated 22 July 2025;v.That the Court be pleased to make such other orders it may deem just to grant in the circumstances;vi.That the costs of this Application be provided.

2.The Application is anchored on the substantive grounds set out on its face and is supported by the Affidavit of the Applicant sworn on 10 November 2025, together with a Further Affidavit sworn on 1 December 2025.

3.The Respondent fiercely opposes the Application through a Replying Affidavit sworn on 21 November 2025, raising preliminary issues of bad faith, material non-disclosure, and the alleged deliberate frustration of the Consent Decree by the Applicant himself.

### **Brief Background**

4.Following the dissolution of their marriage, which was made absolute vide Decree Absolute issued on 11 October 2023, the Respondent instituted Matrimonial Property Cause No. E021 of 2024 via an Originating Summons. The suit sought the equitable division of vast assets acquired during the subsistence of the marriage, ranging from prime real estate to corporate shareholding and high-end motor vehicles.

5.During the pendency of the proceedings, the parties elected to subject the dispute to negotiation. These negotiations successfully culminated in a formal Consent Agreement dated 22 July 2024. On 31 July 2024, this Court formally adopted the Consent as a Judgment of the Court, and a formal Decree was subsequently extracted and issued on 3 October 2024.

6.The adoption of this Consent was intended by the Court to mark the terminal point of the matrimonial property litigation. However, the implementation of the Decree descended into a protracted and hostile exchange of correspondence between the legal representatives of the parties.

7.The execution process stalled entirely due to a bitter standoff over the original Certificate of Lease for Apartment No. C2, Block C, [Particulars Withheld] Apartments. The Respondent refused to execute any of the transfer instruments, corporate board resolutions, or joint bank account closure forms unless the original title for the [Particulars Withheld] Apartment was surrendered to her and vacant possession was instantaneously granted. The Applicant, conversely, maintained that he did not possess the original title document, having only a copy of the lease and the sale agreement in his custody, and, therefore, could not produce that which he did not possess.

8. Further compounding the impasse, the Respondent raised alarms regarding the Insolvency Petition (Cause No. E051 of 2023) previously filed by the Applicant against their jointly owned company, [Particulars Withheld] Limited. Although the Hon. Justice J.W. Mong'are dismissed the petition on 19 February 2024—ruling that the company's assets constituted matrimonial property subject to the jurisdiction of the Family Division—the Applicant had subsequently lodged a Notice of Appeal to the Court of Appeal. The Respondent expressed profound apprehension that executing the documents without receiving the original title would leave her legally vulnerable to dispossession should the insolvency appeal succeed.

9. Faced with the Respondent's absolute refusal to sign the conveyancing, corporate, and banking instruments, the Applicant filed the present Application.

### The Applicant's Case

10. The Applicant's case is articulated in the Supporting Affidavit sworn on 10 November 2025, the Further Affidavit sworn on 1 December 2025, and the Submissions dated 16 March 2026. The fundamental premise of the Applicant's posture is that the Consent Judgment is a final, binding decree of the Court that cannot be unilaterally frustrated, renegotiated, or held in abeyance by the Respondent.

11. The Applicant deposes that he has made continuous, good-faith efforts to effectuate the Consent over a period exceeding twelve months. The Applicant asserts that he provided all corporate and property documents within his possession and proactively instructed his advocates to prepare the requisite transfer forms. This included drafting the Form LRA 33 for the [Particulars Withheld] property, drafting share transfer forms for [Particulars Withheld] Limited, preparing board resolutions to alter the corporate structure, and drafting letters of mandate alteration for NCBA and DTB banks.

12. Addressing the Respondent's allegations of material non-disclosure regarding Insolvency Petition No. E051 of 2023, the Applicant argues that the insolvency proceedings were rendered legally moot and obsolete by the Consent Judgment itself. The Applicant draws the Court's attention to Clauses 3 and 4 of the Consent, wherein he explicitly agreed to write off any loans owed to him by [Particulars Withheld] Limited and agreed to the dissolution or transfer of the company. By legally compromising the debt, the underlying statutory basis for the insolvency appeal was extinguished, rendering the Respondent's fears of dispossession baseless and legally unfounded.

13. Regarding the highly contested [Particulars Withheld] Apartment title, the Applicant swears that he has never possessed the original Certificate of Lease. The Applicant notes that [Particulars Withheld] Limited is jointly owned and directed by the Respondent, who was intimately involved in the initial acquisition of the property, implying she is equally capable of tracing the document's whereabouts. The Applicant further clarifies that he does not personally collect rent from the [Particulars Withheld] Apartment; rather, the property management company remits the rental income directly into the corporate bank account of [Particulars

Withhheld] Limited, an account over which the Respondent holds equal directorial oversight.

14.The Applicant submits that the Respondent's refusal to sign the bank account closure forms allows her unauthorized, continued access to his personal financial data in the NCBA account (A/C No. 65xxxxxxx37), constituting an ongoing violation of his privacy and a direct breach of Clause 9 of the Consent. Furthermore, the failure to dissolve or restructure [Particulars Withhheld] Limited exposes the corporate entity to accumulating statutory penalties and tax liabilities with the Kenya Revenue Authority.

### The Respondent's Case

15.The Respondent's opposition is mounted via the Replying Affidavit sworn on 21 November 2025 and Submissions dated 24 March 2026. The central thesis of the Respondent's resistance is that the Applicant has approached the seat of equity with unclean hands, orchestrating a sophisticated scheme to retain control of the matrimonial assets apportioned to her while swiftly taking absolute control of the assets allocated to himself.

16.The Respondent contends that the Application is bathed in bad faith and characterized by material non-disclosure. The Respondent places immense weight on the Applicant's initial proposal for her to take over [Particulars Withhheld] Limited in its entirety. The Respondent views this proposal not as an administrative convenience, but as a calculated trap designed to saddle her with a corporate entity subject to an active insolvency appeal. The Respondent points out that despite the Consent Judgment stipulating the write-off of the director's loans, the Applicant has deliberately neglected to file a formal Notice of Withdrawal of the Appeal in the Court of Appeal, leaving the existential threat of liquidation hanging over the company and, by extension, over the [Particulars Withhheld] Apartment and the Naivasha property.

17.The crux of the Respondent's grievance revolves around the [Particulars Withhheld] Apartment. The Respondent deposes that the Applicant is intentionally hiding the original title document to frustrate the transfer and maintain leverage. Furthermore, the Respondent alleges that the Applicant has instructed the property management company to continue remitting rental income to his benefit, thereby unlawfully depriving her of the financial fruits of the judgment since 1 August 2024, when the property theoretically vested in her under the Consent. The Respondent categorically states her willingness to execute all transfer documents, but only on the strict, non-negotiable condition that the Applicant first relinquishes the original [Particulars Withhheld] title, pays over all rent collected since the Consent, and grants her vacant possession.

18.The Respondent further accuses the Applicant of engaging in extraneous side shows. Specifically, she annexes documentation demonstrating that the Applicant has been utilizing the financial parameters of the Decree to demand that she contribute 50% toward their children's school fees (currently the subject of separate proceedings in the Children's Court, Cause No. E551 of 2022), while simultaneously starving her of the rental income necessary for her financial planning to meet such obligations.

## Analysis & Determination

19. The Court distils the following issues for determination: i. Whether the Consent Judgment of 31 July 2024 is final and binding, and whether it legally extinguishes the pending Insolvency Appeal; ii. The effect of utilizing a corporate vehicle ([Particulars Withheld] Limited) to hold matrimonial assets and the obligations of the parties in dismantling this structure; iii. How the Court should resolve the stalemate over the missing original title for the [Particulars Withheld] Apartment; iv. Whether the Respondent's conditional refusal to execute the documents warrants the Court's intervention to empower the Deputy Registrar to act in her stead.

## The Sanctity and Enforceability of the Consent Judgment

20. The foundation of this entire dispute rests upon the Consent Judgment recorded by the parties and adopted by this Court on 31 July 2024. The law regarding the sanctity, finality, and binding nature of consent judgments is exceptionally well-settled and deeply entrenched in our jurisprudence.

21. A consent judgment is not merely a judicial edict handed down from the bench; it is a binding contract between the parties, formally elevated to the status of a court order. It represents the ultimate expression of the parties' autonomy to define the parameters of their settlement and bring an end to litigation. Consequently, a court will only interfere with, vary, or set aside a consent judgment on exceedingly narrow grounds—namely, those specific grounds that would justify the vitiation of a standard contract in equity, such as fraud, collusion, mutual mistake, or misrepresentation.

22. This foundational principle was authoritatively laid down by the predecessor to the current Court of Appeal in the seminal case of *Brooke Bond Liebig (T) Ltd v Mallya* EA 266, where the Court established that a consent freely entered into by parties with competent legal representation cannot be arbitrarily discarded or unilaterally ignored. This strict approach was subsequently reinforced in *Flora Wasike v Destimo Wamboko* 1 KAR 625, wherein it was unequivocally held that an agreed award or consent judgment can only be set aside on grounds that would justify setting aside a contract, and that an appeal is generally precluded under Section 67(2) of the Civil Procedure Act.

23. In the instant case, neither the Applicant nor the Respondent has filed any formal application to review, vary, or set aside the Consent Judgment of 31 July 2024. Both parties acknowledge its existence, its genesis through negotiation, and its binding nature.

24. The Respondent's primary justification for refusing to implement the Consent—and refusing to sign the requisite documents—is her fear of the pending appeal in Insolvency Petition No. E051 of 2023. The Court has carefully examined the Ruling of the Hon. Justice J.W. Mong'are delivered on 19 February 2024, which correctly recognized that the assets held by [Particulars Withheld] Limited were inextricably linked to the matrimonial union of the parties, thereby divesting the Commercial Court of jurisdiction in favor of the Family Division.

25.The Respondent argues that because the Applicant filed a Notice of Appeal against Justice Mong'are's Ruling and has not formally withdrawn it, he harbors a latent, malicious intent to liquidate the company and strip her of the properties via the appellate process. The Court finds this argument legally untenable in light of the subsequent Consent Judgment. Clause 3 of the Consent states unequivocally: "That David Karanja Macharia will write off any loans owed to him by [Particulars Withheld] Limited". The entire premise of the insolvency petition was a debt of Kshs. 33,979,042/- allegedly owed by the company to the Applicant.

26.By voluntarily executing the Consent, the Applicant legally extinguished the debt. Without a foundational debt, there can be no insolvency proceedings. The Consent Judgment acts as an absolute estoppel against the Applicant pursuing the appeal. Should the Applicant attempt to prosecute the appeal in the Court of Appeal, the Consent Judgment would serve as an insurmountable defence, rendering the appeal frivolous and vexatious. Therefore, the Respondent's reliance on the pending Notice of Appeal as a shield to avoid executing the transfer documents is devoid of legal merit. The Consent compromised the insolvency dispute entirely.

### **The Corporate Veil and Matrimonial Property Distribution**

27.A significant complication in this matter arises from the parties' historical use of a corporate entity, [Particulars Withheld] Limited, to acquire and hold high-value matrimonial assets. The company was incorporated on 7 March 2014, during the subsistence of the marriage, with the Applicant and Respondent holding equal shares (50% each) and serving as the sole directors.

28.The intersection of company law and family law often generates intense friction, particularly when spouses attempt to utilize the doctrine of separate corporate legal personality to shield assets from equitable division. However, the courts, guided by Article 45(3) of The Constitution and the Matrimonial Property Act, 2013, have increasingly adopted a purposive and pragmatic approach to ensure that justice is not defeated by corporate technicalities.

29.The jurisprudential trajectory in this jurisdiction commands that where a company is essentially a family alter ego, wholly owned and controlled by the spouses without external third-party interests, the Court is empowered to lift or pierce the corporate veil to distribute the underlying matrimonial assets. This principle was cemented in the landmark Court of Appeal decision in *PWK v JKG* [2015] KECA 535 (KLR). In that case, the Court noted that a practical approach to matrimonial property inextricably mixed with a company under the sole shareholding of a couple is "more conducive to the doing of real and substantive justice untrammelled and unfrustrated by the technicalities and esoteric niceties of company law that would defeat what ordinary citizens would see as rather straight-forward issues of division of matrimonial property".

30.In the present case, the parties themselves recognized this legal reality by agreeing in Clause 4 of the Consent Judgment to either dissolve [Particulars Withheld] Limited or have one party take over the shares to facilitate the transfer of the [Particulars Withheld] Apartment, the Jeep Cherokee, and the Naivasha property. The Applicant's initial proposal for the Respondent to take

over the company entirely was a legally sound mechanism to effectuate the transfer of the underlying assets without incurring excessive stamp duty and conveyancing costs associated with transferring assets out of a corporate shell.

31. However, the Respondent possessed the absolute right to decline taking over the corporate vehicle, preferring direct transfers of the specific assets to her individual name. While this route is administratively heavier, it is entirely permissible under the terms of the Consent. The refusal of the Respondent to execute the share transfer forms and board resolutions necessary to reorganize the company's structure frustrates the realization of the decree. As long as [Particulars Withheld] Limited remains in legal limbo, the assets remain trapped. The corporate veil must not be used as a weapon by either party to stagnate the execution of a matrimonial property decree. The Respondent must sign the resolutions to permit the company to effectuate the transfers.

### **The Legal Stalemate over the Original Certificate of Lease**

32. The most intractable and fiercely contested issue between the parties is the whereabouts of the original Certificate of Lease for Apartment No. C2, Block C, [Particulars Withheld] Apartments (L.R. No. 330/1346). The Respondent insists, with profound suspicion, that the Applicant is maliciously withholding the original title to prevent her from taking vacant possession and finalizing the transfer. The Applicant, conversely, has sworn a solemn affidavit stating that he does not possess the original title and has provided all documents within his custody.

33. In property disputes of this nature, where an original title is allegedly lost, misplaced, or maliciously withheld by a belligerent party, the law provides a clear statutory mechanism to prevent the permanent paralysis of property transactions. The Land Registration Act, 2012, is designed to facilitate the efficient administration of land and to prevent parties from holding property transfers hostage through the suppression of title documents.

34. Section 31(1) of the Act explicitly mandates the production of the original certificate of title or certificate of lease during the registration of any dealing with the land. However, this requirement is not absolute. Recognizing the practical realities of lost or contested documents, Section 31(2) of the Act grants the Land Registrar the discretionary power to dispense with the production of the original document.

35. As established in statutory interpretation and applied in cases involving the execution of court decrees, if the Registrar considers that the original title cannot be obtained, or that it is being withheld unreasonably, or can only be obtained with extreme difficulty, the Registrar may dispense with its production, note the dispensation on the register, and proceed with the registration of the transfer or transmission. This application of the law was clearly articulated in *In re Estate of Mugo Wamaru (Deceased) (Succession Cause 701 of 2002) KEHC 2043 (KLR)*, where the Court affirmed the power of the Land Registrar to dispense with the production of original titles to facilitate the execution of court orders regarding land.

36.This Court exercises robust supervisory and enforcement jurisdiction over matrimonial property decrees. Where a decree orders the transfer of land, and the execution is stymied by a missing or withheld title deed, the Court possesses the inherent and statutory authority to direct the Land Registrar to dispense with the production of the original document. This ensures that the decree of the Court is not rendered impotent by the physical absence of a piece of paper.

37.Therefore, the Respondent's insistence that she will unconditionally refuse to execute the transfer instruments until the Applicant physically produces the original [Particulars Withhhheld] title is an untenable legal position. The absence of the title is a curable defect under the Land Registration Act. Parties can move the Court to direct the Land Registrar to dispense with the production of the original Certificate of Lease for Apartment No. C2, Block C, [Particulars Withhhheld] Apartments to facilitate its immediate transfer to the Respondent.

38.Regarding the rental income, the Respondent alleges that the Applicant is illegally collecting rent from the [Particulars Withhhheld] Apartment to her detriment. The Applicant counters that the rent is remitted by the property management company into the corporate account of [Particulars Withhhheld] Limited. Since [Particulars Withhhheld] Limited is jointly owned, the funds are technically held by the company. However, the Consent Judgment effectively awarded the beneficial ownership of the [Particulars Withhhheld] Apartment to the Respondent as of 31 July 2024. In equity, the Respondent is entitled to the rental income accruing from the property from the date the decree was issued. The Applicant cannot be allowed to unjustly enrich himself or the company through rent derived from an asset that no longer belongs to him in equity. An accounting of the rent remitted to [Particulars Withhhheld] Limited from 1 August 2024 to the date of actual transfer must be undertaken, and the apportioned sum released entirely to the Respondent.

### **The Invocation of Section 98 of the Civil Procedure Act**

39.Having established that the Consent Judgment is binding, the insolvency threat is legally moot, and the missing title can be statutorily bypassed, the Court now turns to the ultimate relief sought by the Applicant: the invocation of Section 98 of the Civil Procedure Act.

40.The Applicant seeks a mandatory order compelling the Respondent to sign the transfer instruments, board resolutions, and bank closure forms within 7 days, failing which the Deputy Registrar should be authorized to sign them on her behalf.

41.Section 98 provides the statutory anchor for this relief:Where any person neglects or refuses to comply with a decree or order directing him to execute any conveyance, contract or other document or to endorse any negotiable instrument, the court may, on such terms and conditions, if any, as it may determine, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be endorsed by such person as the court may nominate for that purpose, and the conveyance, contract, document or instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it.

42. Furthermore, Section 34 dictates that all questions arising between parties to a suit relating to the execution, discharge, or satisfaction of a decree shall be determined by the court executing the decree.

43. The jurisprudence surrounding Section 98 reveals that it is a powerful equitable tool designed specifically to cure the exact mischief present in this case: a recalcitrant party attempting to defeat a court order through passive resistance, conditional demands, or outright refusal to sign conveyancing documents. It operationalizes the equitable maxim that "equity looks on as done that which ought to be done."

44. The Applicant correctly relies on *ASW v WN* (Matrimonial Cause 8 of 2017) KEHC 2014 (KLR), a matrimonial property dispute where the Court, faced with a party refusing to execute documents to facilitate the sale or lease of a property as per a consent order, directed that if the defaulting party failed to execute the documents within 7 days, the Deputy Registrar would be empowered to execute them.

45. The Respondent herself cited *Atieno v Opeyo* KEELC 1264 (KLR), where the Environment and Land Court held that the refusal to sign transfer documents pursuant to a court decree amounts to contempt, and the court possesses the inherent power to facilitate the execution of its orders by directing the Deputy Registrar to sign the completion documents.

46. The Respondent's argument that the Court should decline to exercise this discretion because the Applicant is allegedly at fault is unpersuasive. The documentary evidence shows that the Applicant's Advocates forwarded the draft transfer forms, board resolutions, and bank letters to the Respondent's advocates on multiple occasions. The Respondent refused to execute them, citing conditions outside the four corners of the Consent Judgment, for example demanding the original title before signing. A party cannot unilaterally attach new conditions to a sealed Consent Decree.

47. The Respondent's refusal to sign the NCBA and DTB bank account closure forms is particularly egregious. Clause 9 of the Consent explicitly mandated the closure of joint accounts and the removal of the Respondent's details from the Applicant's personal account (NCBA A/C No. 65xxxxxxx37). Retaining access to a former spouse's personal banking information post-divorce is a severe breach of privacy and a direct, inexcusable violation of the Court's order.

48. The administration of justice requires that litigation must come to an end. The Court cannot fold its hands in helplessness and watch its decrees disregarded. The overriding objective of this Court, as enshrined in Sections 1A and 1B of the Civil Procedure Act and Article 159(2) of the Constitution, is to facilitate the just, expeditious, proportionate, and affordable resolution of disputes. Allowing the parties to remain locked in a perpetual stalemate defeats this objective.

49. The Court determines that the Respondent has unreasonably neglected and refused to comply with the Consent Decree of 31 July 2024 by failing to execute the necessary conveyancing, corporate, and banking instruments. The Applicant has satisfied the threshold for the invocation of Section 98 of the Civil Procedure Act.

50. Before concluding, the Court must address an extraneous issue injected into these proceedings by the Respondent. In her Replying Affidavit, the Respondent annexes documentation relating to Children's Case No. E551 of 2022, alleging that the Applicant is utilizing the financial parameters of the current Decree to demand that she pay 50% of their children's school fees.

51. The Court must firmly state that matters pertaining to the maintenance, education, and custody of the minors fall squarely within the exclusive jurisdiction of the Children's Court under the Children Act, 2022. The allocation of school fees and the respective parental responsibilities are the subject of distinct proceedings. It is highly improper for the Respondent to use a dispute over school fees in a separate forum as a justification for frustrating the execution of a Matrimonial Property Decree in this Court.

52. The execution of property transfers cannot be held hostage to leverage outcomes in child maintenance disputes. The Court wholly disregards the submissions and annexures relating to the Children's Court proceedings as irrelevant to the determination of this Application under Section 98 of the Civil Procedure Act.

53. Accordingly, the Notice of Motion dated 10 November 2025 is allowed in the following terms; i. The Respondent is hereby ordered to execute all the requisite documents necessary to give full effect to the Consent Judgment dated 22 July 2024 within 14 days from the date of this Ruling. These documents include, but are not limited to: a) The Transfer forms in respect of [Particulars Withheld] Block 10/2041 (Kedong). b) The Share Transfer forms relating to [Particulars Withheld] Limited. c) The Board Resolutions necessary for the reorganization or dissolution of [Particulars Withheld] Limited. d) The Bank mandate alteration and account closure forms for DTB Bank and NCBA Bank (specifically regarding the removal of her details from NCBA A/C No. 65xxxxxxx37). ii. In the event the Respondent fails, refuses, or neglects to execute the documents listed in Order No. (i) above within the stipulated time, the Deputy Registrar is hereby authorized pursuant to Section 98 of the Civil Procedure Act to sign and execute all the said documents on behalf of the Respondent, and any document so executed by the Deputy Registrar shall operate and be for all purposes available as if it had been executed by the Respondent. iii. The Applicant and the Respondent, in their capacities as directors of [Particulars Withheld] Limited, shall jointly instruct the company's accountants to undertake a full accounting of all rental income received in respect of Apartment No. 2, Block C, [Particulars Withheld] Apartments from 1 August 2024 to the date of this Ruling. The net rental income accrued during this period shall be released and paid directly to the Respondent within thirty (30) days of this Ruling. iv. Each party shall bear their own costs for this Application.

DATED AND DELIVERED AT NAIROBI THIS 30 DAY OF JULY 2026 HELENE R. NAMISI JUDGE OF THE HIGH COURT  
Delivered on virtual platform in the presence of:  
For the Applicant: Ms Gichuru h/b Guantai  
For the Respondent: Ms Manani h/b Ms Ndirangu  
Court Assistant: Lucy Mwangi

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