



AWM v JKM (Civil Suit 67 of 2019) [2024] KEHC 8950 (KLR) (Civ) (25 July 2024) (Ruling)

Neutral citation: [2024] KEHC 8950 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL SUIT 67 OF 2019
HK CHEMITEI, J
JULY 25, 2024

BETWEEN

AWM APPLICANT

AND

JKM RESPONDENT

RULING

1. This ruling relates to the application dated 15th May, 2023 filed by the Applicant, AWM seeking for orders that:-
 - a. The Respondent is ordered to vacate and grant vacant possession of Title Number 103xxx within seven (7) days of this order.
 - b. The Officer Commanding Rongai Police Station within Kajiado county to assist in enforcement of the order for vacant possession above.
 - c. The Deputy Registrar of this court to sign all necessary documents in the sale of Title Number Ngong/Ngong/ 103111 which the Respondent may refuse to sign; and
 - d. Costs of this application be awarded to the Applicant.
2. The application is supported by affidavits sworn by AWM on 15th May, 2023 and 7th September, 2023. She avers inter alia that in compliance with the judgment delivered on 1st July, 2022 for partitioning of Title Number Ngong/Ngong/20901, she has solely footed the bills related to the survey, sub – division and valuation costs. Subsequent to the sub – division, two new parcel numbers were issued i.e. Title Number 103xxx registered in AWM and JKM’s names and Title Number Ngong/Ngong/103110 registered in the names of JWK and JWK.



3. She deponed that the Respondent has frustrated her efforts to sell their portion aforementioned, as ordered in the judgment of 1st July, 2022 by denying her access to the main compound and house, failing to show up when prospective buyers are at the venue to view the property and/or dismal communication with the Applicant on matters relating to the sale of the property. The Respondent has not in any ways assisted in sourcing for potential buyers for the property.
4. She therefore prays for unrestricted access to the compound and the house erected on the subject matrimonial property Title Number 103xxx.
5. The application is opposed *vide* replying affidavit sworn by JKM on 14th July, 2023. He avers inter alia that he has been cooperative with the Applicant in the processes pertaining to the sub – division of the land. It was agreed between them that the Applicant would be reimbursed the related costs upon the sale of Title Number 103xxx registered in AWM and JKM’s names owing to his financial incapacity due to his struggling business.
6. He denied frustrating the efforts to dispose the land and he only requests for sufficient notice for potential buyers to view it. He prays not to be vacated from the property and house because he lives there with his family and small children and has no money to relocate them to a new house. He will move when the property is sold.
7. The Applicant has filed written submissions dated 8th September, 2023 placing reliance on HCCC No. 20 of 2011 (D E N vs P N N) where the court held as follows, “...What remains is for the petitioner to comply with the orders of this court. In the premises therefore, this court will allow the Respondent’s application as a result of which the petitioner is hereby ordered to give vacant possession of the suit premises i.e.... (particulars withheld) to the Respondent within thirty (30) days of the date of this ruling or in default thereof the Respondent shall be at liberty to evict the petitioner therefrom. The Officer Commanding Kilimani Police Station is directed to provide all necessary assistance to enable compliance with the orders of this court should the petitioner fail to voluntarily give vacant possession. The Respondent shall have the costs of this application. It is so ordered.”
8. The Respondent has filed written submissions dated 22nd September, 2023 placing reliance on the following:
 - a. Article 27 of the Constitution of Kenya, 2010 which provides that all parties are equal before the law with equal protection.
 - b. “Section 12 (4) of the Matrimonial Property Act where it is provided that no spouse shall be evicted from the matrimonial home.
 - c. The case of UMM vs IMM (2014) eKLR where the courts held that as per the Constitution, parties to a marriage are entitled to equal rights at the time of marriage, during the marriage and at the dissolution of the marriage.
 - d. The case of CWM vs JPM 142 of 2018 eKLR where the court held that parties are of equal worth and human dignity whatever their station in life.

Background

9. The instant application arises from the judgment on the originating summons dated 11th October, 2019 in the instant suit, that was delivered by Hon. Judge Thande on 1st July, 2022. It was ordered and declared as follows:



- i. The Applicant and the Respondent are entitled to ½ share of Title Number Ngong/Ngong/20901 in equal shares.
 - ii. Title No. Ngong/Ngong/20901 shall be partitioned so that the Applicant and the Respondent shall get title to their portion and the interested party shall get title to their portion.
 - iii. The Applicant, the Respondent and the interested parties shall within 30 days execute all the requisite documents for the partition of the property to give effect to the orders herein.
 - iv. The share of the Applicant and the Respondent in the property shall be sold and the proceeds of sale shared equally between them.
 - v. The circumstances of this case do not call for an award of costs.
10. Orders (i), (ii) and (iii) have so far been complied with. Order (iv) is pending compliance and is the subject of the application dated 15th May, 2023 that is the subject of this determination.

Analysis and Determination

11. I have carefully considered the application, the response thereto and the rival submissions filed by the parties. What remains as stated above is giving effect to the judgement of the court.
12. The issues for determination, as crafted by the parties, are as follows:
- i. Whether the orders sought by the Applicant in her application should be granted.
 - ii. Should the Respondent be ordered to vacate the matrimonial property?
 - iii. Does the presence of the Respondent hinder the sale of the property?
13. Reading the Respondent's response, it appears to me that he is simply buying his time in the said house. The extent to which the Applicant has gone to procure the conveyancing work without the input of the Respondent is evident.
14. There is no evidence for instance that the Respondent was staying with his young children in the said home. Neither was there any evidence that his business had gone down and therefore unable to move elsewhere. Between the date of judgement and now is about two years. He must have been conscious that the house was supposed to be sold and the proceeds shared out.
15. Since he was holding the keys to the house, I agree with the Applicant that it becomes the Respondent's discretion at what point a potential buyer could see the property. The ground must be levelled for both parties.
16. In the premises I do not see any reason why he should refuse the potential purchasers to view the house. To the extent that he never challenged the judgement, he ought to comply.
17. Consequently, I direct as hereunder.
- (a) The Respondent should vacate the premises within sixty (60) days from the date herein so as to allow the sale of the same free from any occupation.
 - (b) Should the Respondent fail to vacate the said house then the Officer commanding Rongai police station shall enforce this order.
 - (c) Should the Respondent fail to execute the conveyancing documents to the potential purchaser of the said property then the Deputy Registrar of this court shall be at liberty to do so without



notice to the Respondent so as to effect transfer of land parcel number Ngong/Ngong/103111.

(d) The Applicant shall have the costs of this application.

DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 25TH DAY OF JULY 2024.

H K CHEMITEI

JUDGE

