



**CKM v PMK (Family Cause E075 of 2022)
[2024] KEHC 15910 (KLR) (Family) (18 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15910 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY
FAMILY CAUSE E075 OF 2022**

H NAMISI, J

DECEMBER 18, 2024

BETWEEN

CKM PLAINTIFF

AND

PMK DEFENDANT

RULING

1. Before the Court is Notice of Motion dated 16 September 2024 seeking the following orders:
 - i. Spent
 - ii. The Respondent be restrained from selling, alienating, transferring, disposing off and howsoever dealing with the matrimonial property cited in the decree of the Honourable Lady Justice Ali Aroni issued on 19 December 2019 to the detriment of the Applicant pending the hearing and determination of this Application;
 - iii. The Respondent be restrained from selling, alienating, transferring, disposing off and howsoever dealing with the matrimonial property cited in the decree of the Honourable Lady Justice Ali Aroni issued on 19 December 2019 to the detriment of the Applicant pending the hearing and determination of this cause;
 - iv. That the Respondent be compelled to open a joint bank account with the Applicant and deposit rent collected thereto from the rentals known and/or described as:
 - a. LR Number 8XXXX/2 Ngoingwa Plot 6 with 30 units of 2-bedroom apartments;
 - b. PLOT NUMBER 2-XXX joined to PLOT 2-XXX six storey building with 35 units of 2 bedroomed apartments in Particulars withheld area;



- c. Plot No. 10 of LR No 15/870 with 30 units of 2 bedroomed apartments in Particulars withheld area;
 - d. LR NUMBER 13537/236 JUJA with 8 units of one-bedroom apartments;
 - e. 9 single rooms in LR Ndalani/mavoloni/block 1/xxx;
 - f. Plot Number 1/xxxx At Magogoni leased out for farming;
 - g. Plot No. xxx Under LR Number 20xxx1 Kiganjo Estate Thika with 4 bedroomed house and
 - h. 11 units of bedsitters, single rooms and 1 bedroomed rental houses at Plot No. 52 Dandora Ex-muoroto Pending the hearing and determination of this cause
- v. Cost be in the cause
2. The Application is supported by an Affidavit sworn by the Plaintiff/Applicant and stems from an earlier suit, Family Civil Suit No. 68 of 2015, between the parties, in which the Applicant herein had sought a declaration of several parcels of land and motor vehicles as matrimonial property and preservation of the same. In the alternative, disposal of the same and proceeds thereof being shared. Judgement was delivered by Hon. Lady Justice Abida Ali Aroni on 28 November 2019 as follows:
- “Since this court is not yet distributing the properties, i am satisfied that for now the applicant as a wife has demonstrated to this court on a balance of probabilities that the properties listed were acquired during coverture and though registered in the husband’s name she has a beneficial interest in each and every one of them.
- The properties listed in paragraph 6 above are for now declared to be matrimonial property the ratio of contribution will be held in abeyance to be apportioned if at all at the point of distribution.
- None of the properties listed in paragraph above will to be alienated, disposed of, sold, charged and/or interfered with without the consent of both spouses and/or by order of the court.”
3. For avoidance of doubt, the properties that were declared to be matrimonial property are:
- i. LR. NO. 8xxxx/6 – Particulars withheld
 - ii. L.R NO 1xxx7/261 – JUJA
 - iii. PLOT NO. 607 ON LR 1xxx9/2- NDALANI MAVOLONI;
 - iv. JUJA/ KIAORA/BLOCK/ 121/ KIAORA GACHORORO;
 - v. PLOT NO. 34, PHASE 5 – THIKA BIDCO;
 - vi. PLOT NO. 1/xxx6 MAGOGONI
 - vii. PLOT NO. 52 DANDORA
 - viii. PLOT NO. 1xxx/141 - NGOINGWA
 - ix. PLOT NUMBER 2-xxx Particulars withheld ;
 - x. PLOT NO. 15/870 THIKA, Particulars withheld ;



- xi. PLOT NO. 2xxxx1/217, Particulars withheld , THIKA
 - xii. PLOT NO. 1xxxx5/3xx70 SYOKIMAU
 - xiii. KBW xxx L TOYOTA STATION WAGON;
 - xiv. KBQ xxxQ TOYOTA STATION WAGON
 - xv. KBJ xxxN TOYOTA SALON
 - xvi. KBL xxxF TOYOTA STATION WAGON
 - xvii. KAU xxx TOYOTA STATION WAGON
 - xviii. KAV xxx TOYOTA STATION WAGON
 - xix. A MICRO FINANCE BUSINESS
4. The Applicant averred that she is apprehensive that the Respondent may sell, dispose off, alienate or transfer the matrimonial property to her detriment.
 5. In his Replying Affidavit, the Respondent averred that following his separation from the Applicant herein, he met and settled down with two women, and the said unions have been blessed with 3 children each. His response centred on the issue of contribution to the acquisition of the various properties listed by the Applicant. The Respondent averred that the present application is an attempt by the Applicant to divide the properties without proving her contribution thereto. The property described as Plot No. 6 within LR 8468/6 was acquired in 2011, yet parties separated in 2008. He denied that the said parcel of land contains 30 units, but instead hosts the matrimonial home for his wife Lydia and himself.
 6. The Respondent averred that Plot No. 2/011 Thika Estate and Plot No. 10 on LR 15/870 are incomplete and have no rental units thereon. Further, the said properties serve as a matrimonial home for the Respondent and his wife Terry.

Analysis and Determination

7. I have keenly read the application, the response thereto as well as submissions filed by the respective parties. The submissions by parties are based primarily on arguments and not based on any legal provisions or authorities that could guide the Court on the way forward.
8. It is not in contest that despite separating in 2008, the marriage between the Applicant and Respondent was finally dissolved in May 2021. It is also not in contest that there is a valid Court order declaring various properties to be matrimonial properties. There is no evidence that the order was challenged or reviewed. The same stands. At the right time, this court will be called upon to determine the contribution, and subsequently, the share of the properties that each party is entitled to.
9. At this juncture, the only issue to be determined is whether or not the Respondent should be compelled to open a joint bank account and deposit all rental income from the various properties.
10. In her application, the Applicant has invoked the provisions of Order 40 rules 1,3 and 4 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the *Civil Procedure Act* and Article 159 (2) (d) of *the*



Constitution of Kenya. The law relating to matrimonial property is found in the Matrimonial Property Act. Section 7 thereof provides as follows:

Subject to section 6(3), ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition, and shall be divided between the spouses if they divorce or their marriage is otherwise dissolved.

11. It is trite that division of matrimonial property can only happen after dissolution of marriage. There are numerous authorities that speak to this. The issue of interest in the matrimonial property can be, and in this case, has been, determined prior to the dissolution of the marriage. In her judgment, Hon. Abi Ali Aroni, L.J held that the ratio of contribution would be held in abeyance to be apportioned if at all at the point of distribution. It would, therefore, be premature for this Court to direct that the rental income from the properties be deposited in joint account. From my reading of the judgement in Family Civil Suit No. 68 of 2015, it would appear that such a prayer was not before the Court then. Similarly, I note that there is no order for alimony or maintenance of the Applicant from the Divorce Court.
12. Regarding the prayer to restrain the Respondent from alienating, disposing of, transferring or any way dealing with the matrimonial property, the order of the Court made on 28 November 2019 was very clear. To quote:

“None of the properties listed in paragraph above will to be alienated, disposed of, sold, charged and/or interfered with without the consent of both spouses and/or by order of the court”
13. I note that the Respondent has denied the existence of some of properties, yet there is a Court order confirming their existence and the Applicant’s interest therein. Needless to say, the order is valid and stands. The Respondent is reminded that none of the properties listed ought to be alienated, disposed of, sold, transferred and/or interfered with without the consent of both spouses and/or by the Court.
14. In the premise, I allow the Application in terms of prayer (iii) and make the following order:
 - i. The Respondent is hereby restrained from selling, alienating, transferring, disposing off and howsoever dealing with the matrimonial property cited in the decree of the Honourable Lady Justice Ali Aroni issued on 19 December 2019 to the detriment of the Applicant pending the hearing and determination of this cause;
 - ii. Costs in the cause

DATED AND DELIVERED AT NAIROBI THIS 18 DAY OF DECEMBER 2024

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

...Mbohafor the Plaintiff/Applicant

...Njuguna.....for the Defendant/Respondent

