



REPUBLIC OF KENYA



**KENYA LAW**  
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**MNK v MMM (Civil Suit E036 of 2021)  
[2023] KEHC 3635 (KLR) (Family) (24 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 3635 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
CIVIL SUIT E036 OF 2021  
MA ODERO, J  
MARCH 24, 2023**

**BETWEEN**

**MNK ..... APPLICANT**

**AND**

**MMM ..... RESPONDENT**

**RULING**

1. Before this Court for determination is the Notice of Motion application dated June 29, 2022 by which the Applicant MNK seeks the following orders:-
  1. Spent.
  2. That pending the hearing and determination of this suit, the Land Registrars of Muranga and Ruiru be ordered to disclose all the properties registered in the name of the Respondent herein by producing green cards of the said properties.
  3. That costs of this application be in the cause.”
2. The application which was premised upon Section 3A of the *Civil Procedure Act*, Section 14 (a) of the *Matrimonial Properties Act*, Order 40 Rule 1 of the *Civil Procedure Rules* and all other enabling provisions of law was supported by the Affidavit of even date and the further Affidavit dated October 28, 2022 sworn by the Applicant.
3. The Respondent MMM opposed the application through his Replying Affidavit dated September 19, 2022. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated November 1, 2022 whilst the Respondent relied upon his written submissions dated November 17, 2022.



## Background

4. The Applicant herein filed the originating summons dated June 28, 2022 seeking declaratory orders with respect to certain matrimonial properties. The Applicant contends that during the subsistence of their Marriage the Respondent acquired certain properties in Ruiru and Murang'a which were registered in his name. That she wants to incorporate the said properties in her claim because she does not know their exact locations. The Applicant further avers that efforts to obtain copies of the Green Cards from the relevant land Registries hit a block as the land Registrars have declined to provide her with said documents without a court order.
5. The Applicant by this application seeks orders to compel the land Registrar in Ruiru and Murang'a to disclose the properties in which are registered in the name of the Applicant. She contends that if the said orders are not granted then she stands to suffer prejudice as the same are matrimonial properties in which she has a beneficial interest.
6. On his part the Respondent denied that he owned any properties in Ruiru or Murang'a. He states that he owns a matrimonial home in Murang'a which he acquired single handedly. The Respondent argues that if indeed the Applicant contributed to the acquisition of the properties as alleged then she would have been able to provide the particulars of said properties.
7. The Applicant in her Further Affidavit countered that the purpose of this application was to identify the properties which are registered in the name the Respondent. That the Respondent will suffer no prejudice if the information sought is provided as he is in possession of the original titles.

## Analysis and Determination

8. I have carefully considered this application, the affidavit filed in reply thereto as well as the written submissions filed by both parties. The only issue for determination is whether the application has merit.
9. The Applicant is seeking orders to compel the Land Registrars in Ruiru and Murang'a to provide information/documents held in their respective registries. Yet the Applicant has not enjoined the said land Registrars in this application. It is trite law that no person shall be condemned unheard. The Applicant ought to have included or enjoined the persons against whom she is seeking orders in this application. The Land registrars have a constitutional right to be heard in keeping with the principles of Article 50 (1) of the *Constitution of Kenya 2010* which provides for a fair hearing. In my view failure to enjoin the Land registrars is a fatal omission.
10. Be that as it may this application is premised upon Article 35 of the *Constitution of Kenya 2010* which provides for the Rights to Access to information.
11. Section 8 of the *Access to Information Act* 2016 which provides for the manner in which a citizen of Kenya may exercise this right. Provides as follows:-
  - “ 8. Application for access
    1. An application to access information shall be made in writing in English or Kiswahili and the applicant shall provide details and sufficient particulars for the public officer or any other official to understand what information is being requested.
    2. Where an applicant is unable to make a written request for access to information in accordance with subsection (1) because



of illiteracy or disability, the information officer shall take the necessary steps to ensure that the applicant makes a request in manner that meets their needs.

3. The information officer shall reduce to writing, in a prescribed form the request made under subsection (2) and the information officer shall then furnish the applicant with a copy of the written request.
  4. A public entity may prescribe a form for making an application to access information, but any such form shall not be such as to unreasonably delay requests or place an undue burden upon applicants and no application may be rejected on the ground only that the applicant has not used the prescribed form.” [own emphasis]
12. There is no doubt that the Applicant as a citizen of this country is entitled to seek access to information held by the land Registrars in Ruiru and Murang’a. However the procedure to be followed in seeking such information is clearly set out in Section 8 of the Act.
  13. Although the Applicant claims to have sought to be supplied with relevant documents/information she has not annexed any evidence to show that she or her Advocate ever made a written request to any of the Registries seeking the said information.
  14. In other words no evidence was tendered to prove that Section 8(1) of the Act was complied with. How can this court find that the Land Registrars declined to provide the information sought when there exists no evidence that the information was sought in the first place. Failure to provide evidence that a request for information was made renders the present application a nonstarter.
  15. In conclusion based on the foregoing I find no merit in this application. The Applicant is merely engaging in a fishing expedition. The Notice of Motion dated June 29, 2022 is hereby dismissed in its entirety. Costs will be met by the Applicant.

**DATED IN NAIROBI THIS 24<sup>TH</sup> DAY OF MARCH, 2023.**

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**MAUREEN A. ODERO**

**JUDGE**

