



**ASM v JOO (Matrimonial Cause E013 of 2021)  
[2022] KEHC 10542 (KLR) (23 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10542 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MATRIMONIAL CAUSE E013 OF 2021**

**HK CHEMITEI, J**

**JUNE 23, 2022**

**BETWEEN**

**ASM ..... APPLICANT**

**AND**

**JOO ..... RESPONDENT**

**RULING**

1. The applicant and the respondent are husband and wife who are currently estranged and there is a pending divorce cause no. Nakuru cmcc no 18 of 2009. In the meantime, the applicant has filed this originating summons and simultaneously this Notice of Motion dated 30<sup>th</sup> July 2021 seeking interim orders of injunction to restrain the respondent from dealing adversely with matrimonial properties as well as evicting her from their matrimonial home.
2. The application is supported by the sworn affidavit of the applicant sworn on the even date and the grounds on the face thereof. The applicant has deponed that they married each other on 16<sup>th</sup> April 1995 and they were blessed with 4 children. That in the cause of time there have been several disagreements which has resulted in the aforementioned divorce cause which is still subsisting.
3. The applicant deponed that as a result of the above disagreements the respondent has threatened to evict her from their matrimonial home situate at [Particulars Withheld] yet she jointly contributed in the purchase of the same as well as other properties during the subsistence of the said marriage.
4. The applicant thus prays that the property needs to be protected as there is sufficient reasons to believe that the respondent is bend on disposing the same and or from the reach of the applicant. That she will stand to suffer loss and damage hence the need to have the protection of this court.
5. The respondent on his part has filed a preliminary objection on a point of law dated 15<sup>th</sup> December 2021 stating that this court does not have jurisdiction to entertain the application while the divorce



proceedings are pending. That the prayers herein ought to have been sought at the matrimonial proceedings and not herein in terms of Section 17 of the *Matrimonial Property Act*.

6. The applicant through her response dated 31<sup>st</sup> January 2022 argued that the application is properly before this court as the said Section 17 does not preclude any party from filing such an application. The application, she said, is to preserve the properties pending this cause as well as the divorce proceedings.
7. When the matter came up for directions, the court directed the application to be determined by way of written submissions and the preliminary objection simultaneously with the same.
8. The parties have filed the said submissions and at this stage the court does not wish to reproduce the same here. What is clear though is that there subsists a marriage between the parties herein which is strained and at the moment they are going through divorce proceedings.
9. At the same time there are properties including their matrimonial home which the parties have been or are residing in. The applicant has claimed that the respondent intends to evict her and that he intends to dispose some of the properties so as to defeat the outcome of this cause and the divorce.
10. There were no replies from the respondent in form of grounds or a replying affidavit. What the respondent did was to file the preliminary objection stated above.
11. I propose to start with the said objection which in essence its outcome shall determine the application. Does this court have jurisdiction to entertain this claim?
12. I think the answer is on the affirmative taking into account Section 17 of the Matrimonial Properties Act. The same states as hereunder;
  - “(1) A person may apply to a court for declaration of rights to any property that is contested between that person and a spouse.
  - (2) An application under subsection (1) –
    - (a) shall be made in accordance with such procedure as may be prescribed;
    - (b) may be made notwithstanding that a petition has not been filed under any law relating to matrimonial causes.
13. The operative word is where the parties are a couple and whether they are divorced or not. In this case the parties are going through divorce proceedings which is not an issue being denied herein. It is therefore not true to state that this court is not seized of the requisite jurisdiction. Legally speaking they are still married regardless of the challenges they are going through.
14. It must be remembered that the application before court is not the substantive cause but a preliminary step towards sustaining the status quo pending the hearing of the originating summons and by extension the divorce proceedings at the lower court.
15. Having stated so, will any of the parties suffer any prejudice if the application is allowed. I do not think so. The affidavit in support of the application clearly has many issues to be proved especially the acquisition of the properties. At the right time both parties will be required to establish their contribution in their acquisition.
16. The issue of eviction from the matrimonial home as deponed by the applicant although it has not been supported by any tangible evidence has not been challenged either by the respondent. Be it as it may it is necessary to protect her stay and interest therein pending the determination of this cause and the divorce proceedings.



17. This court at the moment is not required, rightfully so, from dividing the matrimonial property but to preserve. The right time shall come for the division.
18. In the premises, I do not find the preliminary objection tenable and hereby dismiss the same. At the same time I find that the application by the applicant is meritorious. She is seeking protection of both herself and the properties they acquired pending the determination of the two causes.
19. The protection obviously shall extent towards the four issues of their marriage who stand to suffer loss should their mother be evicted from their home. At the same time disposing off the assets by any chance shall be prejudicial to the parties. Of course this position applies as well to the applicant.
20. In the premises, the application is allowed as hereunder;
  - a) Pending the determination of this suit, the respondent is hereby restrained by a temporary injunction from evicting the applicant, the children or interfering with the applicant's occupation of their matrimonial home situated at land parcel number Njoro /ngata Block11/xxxx situate within Nakuru county.
  - b) The respondent is hereby pending the determination of this suit temporarily restrained from selling ,disposing damaging or in any other way dealing adversely with the following properties namely, land parcels numbers Nakuru /piave/xxxx (Egerton Housing), Laikipia Nyahururu/xxxx,Njoro/ Ngata Block1/xxxx (new Kiambu), Njoro/ngata Block11/xxxx,Plot No.xx and xx (Kalro1x Phase xxxx),Nakuru –shawa/gicheha Plot No.xx, Miti Mingi Mbaruk Block6/xxxx; Motor Vehicles Registration NumbersKCYxxxx; Shares and Monies held at Egerton University Sacco Shares, Egerton Cosmopolitan Housing Sacco, Kenya Commercial Bank And National Bank.
  - c) Costs in the cause.

DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 23<sup>RD</sup> DAY OF JUNE 2022.

H K CHEMITEI.

JUDGE.

