



FKB v JBR (Civil Case 71 of 2015) [2022] KEHC 10923 (KLR) (23 June 2022) (Judgment)

Neutral citation: [2022] KEHC 10923 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL CASE 71 OF 2015
TW CHERERE, J
JUNE 23, 2022**

BETWEEN

FKB PLAINTIFF

AND

JBR RESPONDENT

JUDGMENT

1. The subject matter in this suit resolves around the flowing properties:
 - a. LR. Ntima/igoki/xxxx
 - b. LR. Ntima/igoki/xxxx
2. FKB (Plaintiff/Applicant) took out an Originating Summons dated 17th August, 2015 under Section 14 (a) of the *Matrimonial Property Act*, 2013 and Order 37 (1) of the *Civil Procedure Rules* seeking
 1. Determination of whether LR. Ntima/igoki/xxxx and LR. Ntima/igoki/xxxx are wholly owned by the Applicant and the children of the marriage to the exclusion of the Respondent
 2. An order to restrain the Respondent from disposing off, alienating, charging, collecting rent from the two properties
 3. An order that rents collected from the two properties be deposited in the children's account
3. Simultaneously with the OS, Applicant on 18.08.2015 filed a notice of motion dated 17.08.2015 seeking to restrain Respondent from collecting rent from the two properties and for an order that the rents be deposited in the children's account.
4. Respondent raised a P.O to the application and the court by a ruling dated 01.02.2018 declined the application and directed that the issues be determined at the hearing of the suits on merit.



5. The Respondent avers that two other similar applications were filed by the Applicant but the outcome of those other applications has not been disclosed.
6. In the current application dated 21.03.2022, Applicant seeks orders that:
 1. Pending the hearing and determination of this suit, Respondent do render accounts of proceeds of monthly rent collected from LR. Ntima/igoki/xxxx and LR. Ntima/igoki/xxxx since the commencement of the suit
 2. Pending the hearing and determination of this suit, Respondent do render the names of each tenant, monthly rent paid by each tenant on properties known as LR. Ntima/igoki/xxxx and LR. Ntima/igoki/xxxx
 3. Pending the hearing and determination of this suit, the monthly rents collected from properties known as LR. Ntima/igoki/xxxx and LR. Ntima/igoki/xxxx be deposited in an interest earning account of both advocates
 4. Pending the hearing and determination of this suit, be restrained from developing and or constructing any further developments on properties known as LR. Ntima/igoki/xxxx and LR. Ntima/igoki/xxxx
 5. Costs be provided for
7. The summons is supported by an affidavit sworn by the Applicant on 21.03.2022 in which she avers mainly that she and her children who are co-owners of the suit properties with the Respondent require proceeds of the rents for their upkeep.
8. Respondent opposes the application by his replying affidavit sworn on 13.04.2022. He avers that he has been maintaining and paying school fees for the Applicant's 3 children two of whom are now working and continues to pay fees for one who is still in school. He further avers that Applicant is salaried and that he has no rent kept anywhere to account for since the balance is used for his upkeep and that of his family.

Analysis and determination

9. I have considered the application in the light of the court record, the affidavits and submissions filed on behalf of both parties. I notice that since the filing of this suit in 2019, the parties have not taken steps to prosecute the suit on merit so that the issues in dispute can be conclusively determined.
10. The numerous applications in this matter not only confuse issues but also delays its conclusion thereby increasing costs for the parties and is therefore inconsistent with the overriding objective of the court to facilitate the just, expeditious, proportionate and affordable resolution of cases.
11. I therefore find as did Gikonyo J in his ruling dated 01.02.2018 that the issues between the parties herein are better dealt with in plenary trial and not in piecemeal as has been the case.
12. From the foregoing, I decline to grant the orders sought and reiterate the order by Otieno J issued on 11.06.2021 that the parties need to take proactive steps to progress the matter for hearing.

DATED AT MERU THIS 23RD DAY OF JUNE 2022

WAMAE. T. W. CHERERE

JUDGE

Appearances



Court Assistant - Morris Kinoti

For Applicant - Mr. Wamwayi for Wamwayi & Co. Advocates

For Respondent - Mr. Carlpeters for Carlpeters Mbaabu & Co. Advocates

