



GKS v JMBB (Matrimonial Cause 2 of 2020) [2022] KEHC 3013 (KLR) (23 June 2022) (Ruling)

Neutral citation: [2022] KEHC 3013 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
MATRIMONIAL CAUSE 2 OF 2020**

RPV WENDOH, J

JUNE 23, 2022

BETWEEN

GKS APPLICANT

AND

JMBB RESPONDENT

RULING

1. On 28/8/2005 J. Mrima read a ruling dismissing a Preliminary Objection dated 27/7/2020 which had been raised by the Respondent. In the said Ruling, the judge directed that the Notice of Motion dated 27/7/2020 proceed to hearing and gave interim orders in the said application. This court directed that parties file submissions to the application dated 27/7/2020.
2. The applicant complied but the respondent did not, neither has he ever filed a response.
The orders being sought in the application are:-
3.
 - a) Spent
 - b) That pending the hearing and determination of this suit, this court be pleased to issue an injunction restraining the respondent from threatening the life of the applicant;
 - c) That pending the hearing and determination of this application, this court be pleased to issue an injunction against the respondent herein to refrain from threatening to evict and/or allow the applicant unconditional access to her matrimonial home and property within which she resided with her children.
 - d) That pending the hearing and determination of this suit, this honourable court be pleased to issue an injunction against the respondent herein to refrain from threatening to evict and/or



allow the applicant unconditional access to her matrimonial home and property within which she resides with her children.

- e) Costs.
4. On 28/8/2020 the application came up before Mrima J. He issued an order dated 11/9/2020 upon hearing Counsel for the parties in open court and their oral submissions as follows:-
- a) The Notice of Preliminary Objection dated 27/7/2020 be and is hereby dismissed.
- b) An injunction be and is hereby issued restraining the respondent herein from in anyway whatsoever threatening the life of the applicant herein.
- c) Unconditional access to the matrimonial home pending the hearing and determination of the notice of motion dated 22/7/2020 be granted by the respondent to the appellant and her children.
- d) The respondent be and is hereby granted leave to file and serve his response to the notice of motion dated 22/7/2020 within 14 days of the ruling dated 28/8/2020.
- e) Leave is hereby granted to the applicant to file and serve a supplementary affidavit, if need be, within 14 days of service of the response by the respondent.
- f) The notice of motion dated 22/7/2020 be heard by way of written submissions.
- g) The respondent files and serves his written submissions within 14 days of service of the applicant's submissions.
- h) The matter be and is hereby fixed for highlighting of submissions on 4/11/2020.
- i) Leave to appeal is hereby granted to the respondent.
5. I am of the considered view that the prayers being sought in the application dated 22/7/2020 were already issued by Mrima J on 27/7/2020. The Respondent did not file any reply to the application and there is nothing new to consider. For this court to consider the application afresh, is an academic exercise. Besides, the applicant has once filed a contempt of court application which this court considered and dismissed. Perhaps, there is a likelihood that the matrimonial properties are being dealt with to the detriment of the applicant and this matter should be heard and determined at once.
6. My humble opinion is that the parties be directed to prosecute the Originating Summons dated 22/7/2020 for the court to determine the issue of matrimonial properties once and for all.

DATED, DELIVERED AND SIGNED AT MIGORI THIS 23RD DAY OF JUNE, 2022.

R. WENDOH

JUDGE

Ruling delivered in presence of:

Ms. Okota for the Applicant

Mr. Kiseru for the Respondent

Ms. Nyauke

