



**ANT v JJKG (Matrimonial Cause E010 of 2021)
[2022] KEHC 11057 (KLR) (28 July 2022) (Judgment)**

Neutral citation: [2022] KEHC 11057 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MATRIMONIAL CAUSE E010 OF 2021**

**RB NGETICH, J
JULY 28, 2022**

BETWEEN

ANT APPLICANT

AND

JJKG RESPONDENT

JUDGMENT

1. The applicant filed the originating summons on May 18, 2021 seeking the following orders:
 - a. The court grant a temporary injunction order restraining the defendant/respondent by himself, his agents, servants or workmen from doing any of the following acts that are to say demolishing, removing, bringing down, wasting, damaging or in any manner whatsoever destroying any of the houses, buildings, fences and /or structures erected on Juja/Kiaura Block14 (Waroma and Njemuwa Inv)/ xxx.
 - b. The land title Number Juja/Kiaura Block14(Waroma and Njemuwa Inv)/ xxx and all developments thereon be settled for the benefit of the Applicant.
 - c. That the respondent be ordered to vacate and subsequently be restrained from entering /or accessing the plaintiff's property known as Juja/Kiaura Block14(Waroma and Njemuwa Inv)/ xxx.
 - d. That land title No. Kiambu/Gatuanyaga/xxxx be settled for the benefit of the applicant in such manner and proportion the court may deem fit.
 - e. The respondent be restrained from interfering with the property known as Kiambu/ Gatuanyaga/xxxx.
 - f. The respondent be restrained from interfering with the applicant's rights and /or interests in the matrimonial properties which will be declared in favour of the plaintiff.



- g. Officer Commanding Station Juja Police Station be authorized to enforce compliance of the court orders.
2. The application is supported by the annexed affidavit of A N T. She averred that she married the respondent on April 22, 2006 and that she constructed their matrimonial home on the property known as Juja/Kiaura Block xx (Waroma and Njemuwa Inv)/ xxx a plot she had solely acquired in the year 2003.
3. She further averred that they moved into the matrimonial property where she cohabited with the respondent as husband and wife and during the subsistence of the family, she was the breadwinner.
4. She averred that land parcel no Kiambu/Gatuanyaga/xxxx was acquired during the subsistence of the marriage.
5. The applicant left the matrimonial property based on cruelty on October 5, 2020 and the marriage was dissolved and a decree nisi issued.
6. The respondent was served with the originating summons. He entered an appearance through the firm of Solomon Mugo & Co. Advocates but did not file any reply to the same.
7. The applicant adduced viva voce evidence reiterating averments in the supporting affidavit and relied on the documents attached to the affidavit. She filed written submissions on direction by the court.

Applicant Submissions

8. The applicant filed the submissions on February 21, 2022. Counsel for the applicant submitted that the applicant acquired the property known as Juja/Kiaura Block xx (Waroma and Njemuwa Inv)/xxx in the year 2003 and she solely developed the same by constructing a house thereon without the support of the Respondent.
9. She further submitted that Kiambu/Gatuanyaga xxxx was acquired through joint efforts of applicant and respondent during the subsistence of the marriage and thus forms part of matrimonial property.
10. Counsel further submitted that the applicant was the breadwinner, did all the house chores as well as provided child care and companionship to the Respondent.
11. In conclusion, counsel submitted that the respondent is not entitled to distribution of Juja /Kiaura Block xx (Waroma and Njemuwa Inv)/xxx. Whereas plot Kiambu/Gatuanyaga/ xxxx forms part of matrimonial property and the same be distributed between the parties.

Analysis And Determination

12. I have considered ground of the originating summons, averments in the supporting affidavit, submissions and perused filed documents and what I consider to be an issue for determination is how the matrimonial property is to be distributed.
13. From the evidence adduced herein, it is not disputed that Kiambu/Gatuanyaga/xxxx was acquired during the subsistence of the marriage. From the record, the same is registered in the name of the respondent and a title deed was issued on December 3, 2013.
14. On the other hand, the applicant submitted that Juja /Kiaura Block xx (Waroma and Njemuwa Inv)/ xxx was acquired by her before the marriage in the year 2003 and in the cause of the marriage, the same was developed and a matrimonial home built thereon and subsequently, the applicant and the



- Respondent moved in the year 2007. The applicant contends she left the matrimonial property on October 5, 2020 after suffering cruelty from the Respondent.
15. Section 7 of the *Matrimonial Properties Act* 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 spouses if they divorce or their marriage is otherwise dissolved.”
16. Section 2 of the *Matrimonial Property Act* defines the contribution to mean monetary and non-monetary contributions and includes:
- a. Domestic Work Management of the Matrimonial home.
 - b. Child care.
 - c. Companionship.
 - d. Management of family business or property and
 - e. Farm work.
17. In respect to plot no. Juja /Kiaura Block xx(Wroma and Njemuwa Inv)/xxx the applicant contends the same was acquired before the marriage but developed during the subsistence of the marriage on her own initiative without support from the respondent. She further averred that she was the breadwinner as the respondent engaged in alcoholism.
18. The averments were not controverted as the respondent did not file any response to the originating summons. The applicant has attached receipts for building materials purchased to prove that she developed the property. The marriage certificate shows that they got married on April 22, 2006 while document annexed to originating summons shows that the applicant was registered as the owner of the property on 24th Decemebr 2003.
19. In the case of *TMW v FMC* (2018) eKLR, the court opined “...for property to qualify as matrimonial property, it ought to have been acquired during the subsistence of the marriage between the parties unless otherwise agreed between them that such property would not form part of matrimonial property.”
20. In the instant case, the respondent has not shown contribution to development of the property acquired by the applicant before marriage neither has he challenged the applicant’s assertion that she solely developed the property.
21. From the foregoing, even though plot no Juja/Kiaura Block xx(Waroma and Njemuwa Inv)/xxx was developed and occupied as matrimonial home by parties herein during subsistence of the marriage. The respondent has not demonstrated contribution in its development; instead the applicant has produced receipts of bulding materials and further stated that she was the sole bread winner and solely did all household chores during the subsistence of the marriage. Her averrements have not been controverted by the respondent.
22. In respect to property known as Kiambu/Gatuanyaga/xxxx the applicant averred that it was acquired during the subsistence of the marriage through joint efforts of both parties and registered in the name of the Respondent.



23. Section 14 (a) of the *Matrimonial Act* provides property acquired during the marriage in the name of one spouse, there shall be a rebuttable presumption that the property is held in trust for the other spouse. No evidence has been adduced to the contrary.
24. From the foregoing I find that property known as Kiambu/Gatuanyaga/ xxxx should be shared equally between the parties.

Final Orders:-

1. Plot No. Juja /Kiaura Block xx (Waroma and Njemuwa Inv)/xxx to go the applicant.
2. Property known as Kiambu/Gatuanyaga/xxxx to be shared equally between the applicant and the respondent.
3. Each party to bear own costs.

JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU THIS 28TH DAY OF JULY, 2022

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RACHEL NGETICH

JUDGE

In the Presence of:

Kinyua – Court Clerk

Ms. Mwaura holding brief for Ms. Ndungu for Plaintiff

No appearance for Respondent

