



REPUBLIC OF KENYA



**KENYA LAW**  
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**JNN v RWN (Matrimonial Case E006 of 2021)  
[2022] KEHC 10321 (KLR) (28 July 2022) (Judgment)**

Neutral citation: [2022] KEHC 10321 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
MATRIMONIAL CASE E006 OF 2021**

**RB NGETICH, J**

**JULY 28, 2022**

**BETWEEN**

**JNN ..... PLAINTIFF**

**AND**

**RWN ..... RESPONDENT**

**JUDGMENT**

1. This a ruling on a Notice of Motion dated 2<sup>nd</sup> March, 2021 filed by the Plaintiff under a certificate of urgency seeking the following orders:
  - a. Spent.
  - b. That a temporary order be issued barring the Respondent from transferring, alienating or in any way disposing off the following properties: Marurui Farmers Plot No. xxxx, Maragua Ridge/xxxx, Shares in Kamuthi Farmers Co-operative Society Limited, Marurui Farmers Plot No. xxx, Marurui Farmers Plot No. xxx and Marurui Farmers Plot No. xxxx.
  - c. That the court does direct the rent collected from Marurui Farmers Plot No xxx be deposited in court pending the hearing and determination of this application.
  - d. That in the alternative to three (3) this honourable court do order that rent collected from Marurui Famers Plot No. xxx be shared equally between the Applicant and the Respondent.
  - e. That the costs be provided for.
2. The application is premised on the grounds that the applicant was the husband of the Respondent and their marriage was dissolved in Thika Divorce Cause No. 53 of 2016. The above-mentioned property was jointly acquired during the subsistence of the marriage.



3. The applicant averred that the Respondent has transferred the property to the daughter in an attempt to defeat justice. The property is treated as matrimonial property as the commercial property was jointly built by the applicant and the respondent but the respondent is collecting the rent.
4. The application is supported by the affidavit of James Njoroge sworn on 2<sup>nd</sup> March 2021. He restated grounds in support of the application and stated that his wish is for the transferred property to revert back as matrimonial property.
5. The Respondent did not file response despite being served.

### **Analysis and Determination**

6. The respondent failed to file response to the application nor a defence.
7. Despite the suit herein being undefended, the plaintiff is required in law to prove the claim as per Sections 107 and 109 of the *Evidence Act* (Cap. 80). Section 7 of the *Matrimonial Property Act* 2012 which 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 the spouses if they divorce or their marriage is otherwise dissolved.”

8. From the above statutory provision, matrimonial property vest in spouses according to their contribution. If a parent decides to transfer property to a child, it should be property that form share of parent intending to transfer. I do agree with the plaintiff that transfer of property by respondent to their daughter is intended to defeat the rights of Plaintiff to matrimonial property. I also take note of the averments that the defendant is solely collecting rent from the premises in exclusion of the Plaintiff.
9. In view of the fact that there is no challenge of the applicant’s averment, I will allow orders sought in order to preserve the property pending hearing and determination of originating summons.
10. Final Orders:-
  - (1) The Respondent is hereby restrained from transferring alienating or in any way disposing off the following properties: Marurui Farmers Plot No. xxxx, Maragua Ridge/xxxx, Shares in Kamuthi Farmers Co-operative Society Limited, Marurui Farmers Plot No. xxx, Marurui Farmers Plot No. xxx and Marurui Farmers Plot No. xxxx.
  - (2) Rent collected from Marurui Farmers Plot No. xxx be shared equally between parties herein.
  - (3) Costs in the cause.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBUTHIS 28<sup>TH</sup> DAY OF JULY, 2022**

.....

**RACHEL NGETICH**

**JUDGE**

**In the Presence of:**

Kinyua – Court Clerk

Ms. Werimi holding brief for Waweru Nyambura for Applicant



No appearance for Respondent

