



**PTN v PWT (Matrimonial Case E018 of 2021)
[2022] KEHC 11166 (KLR) (28 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 11166 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MATRIMONIAL CASE E018 OF 2021**

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

BETWEEN

PTN APPLICANT

AND

PWT RESPONDENT

RULING

1. The applicant filed originating summons on 6th December, 2021 seeking to have the following property declared as matrimonial property.
 - a. Apartment No. A9, on 5th Floor Block A together with one (1) parking bay, erected on land parcel No. Dagoretti/Riruta/63XX and situated at Dagoretti, within the Republic of Kenya.
 - b. Apartment Number 3B, erected on Title Number Kiambaa/Ruaka 6394 and situated at Ruaka, within the Republic of Kenya.
 - c. Residential Plot No. 1XX measuring approximately 30 by 80 ft and contained in share certificate No. 4XX at Kimuri Housing Company Limited and situated at Kasarani, within the Republic of Kenya.
 - d. Portion 2X of ERF 6 Cato Manor Registration Division XX and Province of Kwa Zulu-Natal in extent 770 (Seven Hundred and Seventy) square meters and situated in Durban within the Republic of South Africa.

2. The applicant proposed the property be distributed as follows:
 - a. PTN
 - i. Residential plot No 1XX measuring approximately 30 by 80ft and contained in certificate No. 4XX.



- ii. Apartment No. 3B on Title No. Kimbaa/Ruaka 63XX.
 - b. PWT
 - i. Apartment XX, on the 5th Floor Block A and 1 parking Bay on Dagoretti/Riruta/46XX.
 - ii. Portion 2X of ERF 6 Cato Manor.
3. The application is premised on the grounds that the property was obtained during the subsistence of the marriage and marriage between the applicant and the Respondent has been dissolved and a decree absolute issued vide Kikuyu SPM Court Divorce Cause No. 12 of 2020. There is no dispute regarding the distribution of the properties.
4. The applicant has filed an affidavit in support sworn on 6th December 2021. He averred that the marriage with the Respondent was dissolved and a decree absolute made on 3rd August 2021. The above mentioned properties were acquired during the subsistence of the marriage. The proposed mode of distribution is not disputed.
5. The applicant contends the respondent has not filed any response and seeks to have the application allowed as prayed.
6. I have however perused the court file and I do not find an Affidavit of Service on record as proof that the Respondent was served. In the circumstances, I am not satisfied the applicant was served with the originating summons. In the circumstance, I decline to grant the orders as prayed and order that the Respondent be served with the application before further directions are issued.
7. Final Orders:-
 1. Respondent to be served.
 2. Final directions to be given on a date to be fixed by the Registry.

RULING 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

No appearance for parties

