



**MWN & 5 others v MMN & another (Civil Case 19 of 2011 & 74 of 2020 (Consolidated)) [2022] KEHC 14575 (KLR) (Family) (31 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14575 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
CIVIL CASE 19 OF 2011 & 74 OF 2020 (CONSOLIDATED)  
AO MUCHELULE, J  
OCTOBER 31, 2022**

**BETWEEN**

**MWN ..... 1<sup>ST</sup> APPLICANT  
LIB ..... 2<sup>ND</sup> APPLICANT  
EMB ..... 3<sup>RD</sup> APPLICANT  
BGI ..... 4<sup>TH</sup> APPLICANT  
AMN ..... 5<sup>TH</sup> APPLICANT  
ENN ..... 6<sup>TH</sup> APPLICANT**

**AND**

**MMN ..... 1<sup>ST</sup> RESPONDENT  
RNN ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. On April 30, 2020 this court delivered judgment in which it declared that Kagaari/Kigaa/6016, Kagaari/Kigaa/6017, Thika Municipality Block 2/275, Ngandori/Kirigi/6905 and vehicle KBA 772P, and all the developments on the land property, were acquired through the joint efforts of the 1<sup>st</sup> respondent M.N.N. and 2<sup>nd</sup> respondent R.N.N., and that the contribution of each was 50% in each property. The properties were to be valued and sold for each party to get 50% of the proceeds.
2. The parties had been married between 1987 and May 17, 2018. The court found that the property was acquired during the marriage.



3. The applicants M.W.N., L.I.B, E.M.B, B.G.I., A.M.N. and E.N.N. filed a notice of motion dated 18<sup>th</sup> August 2021 seeking the following orders:-
  - a) That this matter be certified urgent and be heard exparte on the first instance by reason of its urgency.
  - b) That this court be pleased to issue a stay of execution of the judgment herein pending the hearing and determination of this application.
  - c) That this court be pleased to determine the Applicant's shares in the properties subject matter of the judgment herein namely: Kagaari/Kigaa/6061, Kagaari/Kigaa/6017, Thika Municipality Block 2/275 and Ngandari/Kirigi/6905 as they are ancestral properties held in trust for the Applicants who contributed towards their acquisition financially; and
  - d. That the costs of this application be provided for.”
4. Their case was that parcel Thika Municipality Block 2/275 was solely bought by the 2<sup>nd</sup> respondent in 2010 long after he had separated from the 1<sup>st</sup> respondent who did not contribute to its acquisition. Secondly that vehicle KBA 772P has never belonged to the 1<sup>st</sup> respondent. Thirdly, parcel Ngandori/Kirigi/6905 was solely bought by the 2<sup>nd</sup> respondent and fraudulently registered in the name of the 1<sup>st</sup> respondent. Fourthly, parcels Kagaari/Kigaa/6016 Kagaari/Kigaa/ 6017 were ancestral parcels given to the 2<sup>nd</sup> respondent by his late father Benard Njeru Kangai to hold in trust for himself and the applicants and therefore cannot be sold as ordered by the court. The applicants are the sisters and brothers of the 2<sup>nd</sup> respondent. They seek that they be joined into the matter, the matter be re-opened and that their respective shares in the two properties be determined. Further, they want the matter to be re-opened so that the court rehears the evidence regarding whether all the above properties were matrimonial property, and whether the 1<sup>st</sup> respondent made any contribution to their acquisition.
5. It is material to point out that the 2<sup>nd</sup> respondent failed to respond to the originating summons that the 1<sup>st</sup> respondent filed on June 20, 2011 to determine the matrimonial property between them. The summons led to the judgment subject of the present application. The 2<sup>nd</sup> respondent filed an application dated October 18, 2020 seeking to review the judgment and to have him file a defence to the originating summons. The application was defended and dismissed with costs on February 25, 2021. I considered that the applicants' application is a second attempt at review.
6. The present application was not opposed.
7. It is clear that this suit has been heard and determined. The judgement was delivered on April 30, 2020. Order 1 rule 10(2) of the [Civil Procedure Rules](#) provides that:-
  - “(2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”
8. It does appear from the provision that the court has a discretion to join a party to proceedings at any stage of the proceedings while they are still pending but not after conclusion of the matter, where judgment has already been delivered. Indeed, the Court of Appeal in [JMK v MWM & another](#)



[2015]eKLR held that the provisions above become inapplicable where the suit or proceedings have been finally disposed of and there is nothing more to be done.

9. I find that the applicants cannot be joined in the matter as it has already been determined. I consequently dismiss the application, and make no order as to costs.

**DATED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 31ST DAY OF OCTOBER  
2022**

**A.O. MUCHELULE**

**JUDGE**

