



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**GKM v MNK (Originating Summons 1 of 2018)
[2022] KEHC 16366 (KLR) (16 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16366 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
ORIGINATING SUMMONS 1 OF 2018
EM MURIITHI, J
DECEMBER 16, 2022
IN THE MATTER OF SHARING MATRIMONIAL PROPERTY
AND
IN THE MATTER OF MARRIED WOMEN PROPERTIES ACT**

BETWEEN

GKM APPLICANT

AND

MNK RESPONDENT

RULING

1. By a notice of motion under certificate of urgency dated September 10, 2021 brought under order 51 rules 1 & 2, order 49 rule 5 of the Civil Procedure Rules, sections 13(1) (7) of the Environment and Land Act No 19/2011, the applicant seeks, “(b) That this honourable court be pleased to order that all necessary documents to effect the transmission/transfer of various shares to the applicant/plaintiff in respect of plot Nos LR xx/xx/x, golf course, plot No xxx/xx Ngong Township, LR Meru Municipality Block x/xx Meru Town, and plot No Gikomba Market be signed by the Deputy Registrar of this court in place of the respondent/defendant. (c) That this court be pleased to order that the respondent do produce and surrender title deeds for parcel Nos xxx/xx Ngong Town, plot No xx/xx/x golf course and plot No xxx Gikomba Market to the applicant/surveyor, failure of which the production of the said titles and plot ownerships documents be dispensed with.”
2. The application is premised on the grounds on the face of it and supporting affidavit of the applicant sworn on even date. The applicant, a resident of the USA, who is now on holiday but will go back shortly avers that this matter is concluded and the court ordered that the matrimonial properties between herself and the respondent be shared in the ratio of 60-40%. As no appeal or review has been sought against the said judgment, the Deputy Registrar of this court should sign all necessary



documents on behalf of the respondent, who has been unwilling and delaying to do the same. She also prays that the original title and plot documents be dispensed with, because the respondent has refused to surrender them.

3. The application is opposed by the replying affidavit of Dr MNK, the respondent herein sworn on October 18, 2021. He avers that the application is full of falsehoods which are meant to mislead the court, as he was dissatisfied with the decision of the court and he filed a notice of appeal on June 25, 2019. He has however not filed the record of appeal due to unavailability of certified copies of the proceedings. He refutes the claims that he is uncooperative, as no document has been presented to him to sign. He could not prepare the transfer documents as he was in the process of commencing the appeal process save for the challenges highlighted herein above. He refers to some challenges with the properties which would render it difficult to transfer some of them, like land parcel No Meru Municipality Block x/xx, which was sold way back in 2007, transferred to a third party and the proceeds therein used for educating their 4 children. Plot No xxx Gikomba Market exists only on paper as he has neither received quite possession of the property nor utilized it even for a single day. He avers that the property is occupied by *jua kali* artisans and there has been an outstanding dispute between him and Nairobi City Council. Land parcel number xx/xx/x golf course, is his current matrimonial home where his wife PWM and his 4 children have been residing since 1988. He transferred land parcel No xxxx, his second matrimonial home, to the applicant to use as her residence when in the country. The said property currently remains unoccupied as the applicant and their 4 children are residents of USA and rarely come to Kenya. He faults the trial court for ignoring those facts which have forced him to prefer an appeal especially because he has another wife who has a claim to the properties in question. He avers that he is paying the applicant's legal fees after being ordered by the court to do so. He seeks this court's indulgence as he is currently seeking stay of execution before the court of appeal.
4. The application was canvassed by way of written submissions which were only filed by the applicant on December 15, 2021.
5. The applicant submits that she has never been served with the notice of appeal, and besides the same does not operate as stay of execution of a decree. She urges that since the 60 day window has closed within which the appeal was to be filed, the respondent has lost interest in appealing, and relies on *Mae Properties Limited v Joseph Kibe & another* (2017) eKLR. She urges the court to allow her application as the resultant decree issued on June 15, 2021 has never been stayed or appealed against.

Analysis and Determination

6. The issue for determination is whether the application is merited.
7. On one hand, the applicant wants the Deputy Registrar of this court to be authorized to execute the transfer documents, and the production of the original title documents to be dispensed with, while on the other hand, the respondent seeks the court's indulgence in order to pursue his right of appeal. The respondent has exhibited a notice of appeal lodged in this court on June 25, 2019 whereas the judgment sought to be appealed against was delivered on June 13, 2019. The respondent filed the notice of appeal without unreasonable delay and he cannot thus be said to have lost interest in appealing. The need to carefully balance the respondent's undisputed right to appeal with the corresponding right of the applicant to enjoy the fruits of her decree cannot be overstressed. If this court were to allow the application at this stage, the respondent's appeal would be rendered nugatory, and he would substantially suffer if his intended appeal were to be successful.



Orders

8. Accordingly, for the reasons set out above, the determination of the applicant's application dated September 10, 2021 is put in abeyance pending the hearing and determination of the intended appeal.

9. Costs in the cause.

Order accordingly.

DATED AND DELIVERED ON THIS 16TH DAY OF DECEMBER, 2022.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Mugambi for the Defendant/JD

N/A for the Plaintiff.

