



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**CIVIL CASE NO. E008 OF 2020**

**NK .....APPLICANT**

**VERSUS**

**JPIN.....RESPONDENT**

**RULING**

1. The applicant NK. and the respondent JPIN solemnised their marriage on 6<sup>th</sup> February 2001 at the Registrar's Office, having cohabited since 1998. The marriage subsisted until 25<sup>th</sup> March 2019 when it was dissolved by the Chief Magistrate's Court at Milimani.

2. By originating summons dated 24<sup>th</sup> July 2020 the respondent sought a declaration under **section 17** of the **Matrimonial Property Act, 2013** that the following property registered in the name of the applicant was matrimonial property jointly acquired during their marriage in the sense that she had contributed to its acquisition: -

- (a) Bamburu Plot Free Hold PLT MSA/Mwembe/[...];
- (b) Bamburu Plot Free Hold PLT MSA/Mwembe/[...];
- (c) Kombani Plot Kwale/Kombani Scheme/[...];
- (d) Madaraka Flat LA [...];
- (e) Konza Ranch 2 Acres – [...];
- (f) Motor Vehicles KBQ [...] and KCG [...]; and
- (g) Joint account at Barclays Bank now ABSA Bank No. [...] Nakuru East Branch.

3. While the originating summons was pending, the applicant filed the present notice of motion dated 25<sup>th</sup> February 2021 seeking that the court allows him to demolish and/or pull down the building erected on Bamburi Plot No. MSA/Mwembe/[...] (or otherwise known as Mwembe Legeza Plot No. [...] Bamburi). This is because he has been advised by structural engineers that he commissioned that the building lacks structural integrity and needs to be brought down as the cost of repairing it and/or the cost of salvaging it would not make economic sense. The storey building on the plot has 16 2-bedroomed residential units. Some units have tenants and others do not have. He stated that the building is a danger to the tenants and the public at large, and hence the need to bring it down. In the application, he stated that he is the one who in 2003 bought the plot on which he developed the structure.

4. In opposing the application, the respondent stated that she co-owns this property as she contributed to its acquisition and development while still married to the applicant. Her case was that the applicant was keen to destroy the property to prejudice her interest in this matrimonial property.

5. To start with, the applicant did not file any cause against the respondent in which he could legitimately ground the notice of motion. The cause (the originating summons) was by the respondent. To that extent, the notice of motion is misconceived and incompetent.

6. On the merits, the applicant cannot claim that the building is a danger to the public and still retain tenants therein. He is fetching rent

from these tenants. If the building was that dangerous, as he has been advised, he should have caused it to be immediately vacated. Secondly, one would have expected the applicant to seek the advice of public entities like the National Construction Authority and/or Mombasa County Health or Engineering Department on the structural integrity of the building. These are the licencing authorities. Thirdly, and despite the advice, the entire property is the subject of matrimonial property dispute between the parties and therefore, subject to what the above public authorities will say, the parties should immediately set down the matter for hearing. This way, the interest of either side in the property will be determined.

7. The result is that I dismiss the application with costs.

**DATED and DELIVERED electronically at NAIROBI this 27<sup>TH</sup> MAY 2021.**

**A.O. MUCHELULE**

**JUDGE**