

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

CIVIL CASE NO. 46 OF 2019 (OS)

JMM..... APPLICANT

VERSUS

MWM.....RESPONDENT

RULING

1. The applicant JMM seeks that this court does find his wife MWM to be guilty of contempt of the orders issued on 27th February 2020 and to punish her by imprisonment for a period of six months. The orders subject of the contempt application were as follows:-

(a) rental income from Plot No. E.K. xx Kahawa West from 1st April 2020 be deposited into a joint account which the couple will open and operate until the cause is heard and determined; and

(b) in the meantime, the respondent shall by an interlocutory injunction be restrained from selling, transferring, and charging the suit property until the cause is heard and determined.

2. The background of the dispute is that the couple married on 2nd May 1992 and got two children. The marriage ran into problems, and in 2019 the respondent petitioned for its dissolution. The divorce proceedings are pending. In the meantime, the applicant filed originating summons to determine whether the above plot and the developments thereon were matrimonial property whose acquisition and development he had contributed to; and whether the property should be distributed equally between them. The property has thereon a multi-storey building, with rental houses and the couple's matrimonial home.

3. There is no claim that the respondent has sought to sell, transfer or charge the property. Following the orders, the parties, through their advocates, opened a joint bank account into which rent begun to go. The tenants were remitting rent through the account. The dispute is how much rent has so far gone through the account, the applicant claiming that the respondent has been interfering with the remittances. When rent is paid into the account there are withdrawals that go to either party through the respective advocates. Strictly speaking, the dispute can only be properly determined through an account and/or reconciliation. I am fortified in this observation by the fact that it is not clear how many rental units the property has, and therefore how many tenants there are; how much each pays; and whether any of the tenants is in arrears.

4. I further bear in mind that, it is not every day that the court is called upon to exercise its coercive powers of imprisonment when dealing with a civil dispute between parties. Such powers are only reserved for a party who has willfully failed, refused and/or neglected to obey a court order. The order has to be clear and unambiguous.

5. Lastly, it is considered that the standard of proof in contempt proceedings is higher than proof on a balance of probabilities, though not as high as proof beyond reasonable doubt (**Mutitika –v- Baharini Farm Ltd [1985]KLR 227**).

6. Weighing the rival affidavits of the parties against the applicable law, I find that the applicant has not discharged the burden placed on him and consequently dismiss he application dated 24th July 2020 with costs.

DATED AND DELIVERED AT NAIROBI THIS 18TH DAY OF OCTOBER 2021.

A.O. MUCHELULE

JUDGE