

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

CIVIL SUIT NO. 20 OF 2011 (OS)

D E N.....PETITIONER

VERSUS

P N N.....RESPONDENT

RULING

1. The Court of Appeal in Civil Appeal No. 226 of 2012, between the petitioner herein and the respondent, gave orders to facilitate disposal by sale of the matrimonial property the subject of this suit, and sent the matter back to the High Court for implementation. One of the observations made by the Court of Appeal was that in disposing of the matrimonial property, and especially the former matrimonial home, the welfare of the minor issues ought to be taken into account.

2. I gave directions herein on 8th September 2016 on the implementation of the Court of Appeal judgment. On the issue of the minors I directed that the sale of the subject property would only be conducted after the parties had either jointly or severally secured adequate alternative accommodation or residence for them.

3. On 15th May 2017, the petitioner lodged an application herein, dated 15th May 2017, in which he sought eviction of the respondent from one of the properties, that is to say House Number [.....] Highview Estate Phase II on LR No. Nairobi Block[.....], which is the former matrimonial home, in conformity with my directions of 8th September 2016. The application was urged orally on 6th June 2017.

4. The petitioner stated that he had made alternative arrangements for accommodation of the minors. It transpired at the hearing that the minors, I am told that one of them has since attained majority, are still living with their mother, the respondent, in the said house. The petitioner asserted that the residence he was availing was to accommodate him and the minors and any of the other issues of the dissolved marriage willing to live with him.

5. It is quite clear to me that the condition attaching to the disposal of the properties, relating to the accommodation of the minors, has not been complied with. The minors still reside at the house sought to be sold. The parties have not procured alternative accommodation for them. It is not enough for the petitioner to state that he has leased a house to accommodate them, it is his obligation to have the minors move out of the subject property and safely into the alternative residence or accommodation before he can begin to initiate sale of the former matrimonial home, leave alone evicting the respondent from it.

6. The two parties have rights to the property in question. The court has sanctioned its sale. However, the welfare of the minors reigns supreme. No eviction can be sanctioned prior to the minors being accommodated elsewhere. The orders sought in the application dated 15th May 2017 are not available for granting. I shall accordingly dismiss the said application with costs.

7. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 23RD DAY OF JUNE, 2017.

W. MUSYOKA

JUDGE