



**JWM v MMW (Matrimonial Cause E054 of 2021)  
[2025] KEHC 3534 (KLR) (Family) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3534 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
MATRIMONIAL CAUSE E054 OF 2021  
CJ KENDAGOR, J  
MARCH 13, 2025**

**BETWEEN**

**JWM ..... APPLICANT**

**AND**

**MMW ..... RESPONDENT**

**RULING**

1. The Applicant in the current application for the Court’s consideration is the Respondent in the main Originating Summons that initiated the proceedings in this case.
2. By a Notice of Motion dated 15<sup>th</sup> April 2024, the Applicant seeks the following orders;
  1. That the Applicant/Respondent application dated 9<sup>th</sup> September 2021 be struck out for having been overtaken by events.
  2. That leave do apply to the Applicant/Respondent to file a substantive application under Rule 7 (2) of the Matrimonial Property Rules, if necessary.
  3. That the costs of this application be borne by the Respondent.
3. The Respondent did not file a response, and the Notice of Motion application remains unopposed.
4. The background of the case is that the Respondent filed an Originating Summons dated 8<sup>th</sup> September, 2021 against the Applicant and has never prosecuted the same.
5. In the Originating Summons, the Applicant sought the following orders:
  1. That the Application be certified urgent and heard on priority basis.



2. That the Honourable Court be and is hereby pleased to preserve the following properties; LR No. Juja/Kiaura Block 8 (Kiaura) 1XX0, A Toyota Fielder, Motor Vehicle Registration Number KBC 1XXV and Toyota Landcruiser Prado, Motor Vehicle Registration Number KCF 2XXF.
  3. That this Honourable Court do issue an order declaring that the Applicant has equal beneficial interest in the properties and proceeds from the jointly registered matrimonial properties; LR No. Juja/Kiaura Block 8 (Kiaura) 1XX0, A Toyota Fielder, Motor Vehicle Registration Number KBC 1XXV and Toyota Landcruiser Prado, Motor Vehicle Registration Number KCF 2XXF.
  4. That this Honourable Court be pleased to declare that the Applicant is entitled to the properties on the basis of both financial and non-financial contribution towards their acquisition.
  5. That in the interim, this Honourable Court be and is hereby pleased to issue an order restraining the Respondent whether by himself, his agents, servants and/or employees or otherwise howsoever from alienating, disposing, selling, encumbering, assigning, transferring or in any other like manner dealing with the property LR No. Juja/Kiaura Block 8 (Kiaura) 1XX0, A Toyota Fielder, Motor Vehicle Registration Number KBC 1XXV and Toyota Landcruiser Prado, Motor Vehicle Registration Number KCF 2XXF.
  6. That pending hearing and determination of the Divorce Cause No. E920 of 2021, this Honourable Court be and is hereby pleased to issue an order restraining the Respondent and/or his servants or agents from evicting and/or excluding the Applicant and/or in any way interfering with the Applicant's peaceful living in the matrimonial home LR No. Juja/Kiaura Block 8 (Kiaura) 1XX0.
  7. That the Honourable Court be and is hereby pleased to issue an order compelling the Respondent to submit logbooks and any documents pertaining to the Toyota Fielder, Motor Vehicle Registration Number KBC 1XXV And Toyota Landcruiser Prado, Motor Vehicle Registration Number KCF 2XXF for purposes of clarification and transparency.
  8. That this Honourable Court be pleased to grant such other orders and relief as may be just and fit in the circumstances.
  9. That the Respondents be ordered to pay the costs.
6. The Applicant argues that their marriage has been dissolved and that, by virtue of the marriage dissolution, the O.S. Application dated 9<sup>th</sup> September, 2021 has been overtaken by events. He asserts that the Respondent should file a substantive application under Rule 7(2) of the Matrimonial Property Rules if she wishes to have the distribution of the matrimonial property. He claims he currently resides in the matrimonial home after the Applicant left.
  7. Upon considering the Notice of Motion and the Affidavit in support, I find that the issue for determination is whether the Application has merit and what orders the court should issue.
  8. The Respondent argues that the application has been overtaken by events by virtue of the dissolution of the marriage on 26<sup>th</sup> January, 2024 vide a Judgment in Nairobi Magistrates Court Divorce Cause No. E920 of 2021. However, the said decree was not attached in the Supporting Affidavit, instead the Applicant only annexed the Order emanating from Nairobi Children Court Children Case No. E1487 of 2021.



9. The Applicant contends that the Respondent's prayers in the Originating Summons (O.S.) have become irrelevant and do not align with the context in which they were originally filed. However, the Applicant has failed to provide evidence to substantiate this assertion. Granting the Orders requested in the Application would constitute a drastic measure regarding the O.S. Application. In the absence of concrete evidence to support the claim made by the Applicant, the Court has no grounds to strike out the O.S. Application and/or the Chamber Summons Application that was filed alongside the O.S. The Application is dismissed.
10. This Court has a duty to provide guidance to prevent the delay of the matter and to ensure the swift resolution of cases. As I considered the application, I noted the Applicant's concern that the Respondent seems to have lost interest in the O.S. application. This is evidenced by their failure to pursue the claim and their continued absence from the proceedings, including the hearing of the current application, despite having been served.
11. In the interest of justice and the expeditious hearing and determination of cases, the Deputy Registrar shall issue a Notice to show cause against the Respondent (Applicant in the Originating Summons dated 9<sup>th</sup> September, 2021) as to why this suit should not be dismissed under Order 17, Rule 2 of the Civil Procedure Rules for want of prosecution of the claim. The Notice to Show Cause shall be issued for a hearing on the 4<sup>th</sup> April, 2025 before this Court.
12. The costs of this application shall be in the cause.
13. It is so ordered.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 13<sup>TH</sup> DAY OF MARCH, 2025.**

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**C. KENDAGOR**

**JUDGE**

In the presence of:

Cc Beryl

Ms. Wanjiru Advocate holding brief for Walukwe Advocate for the Applicant

No attendance for Respondent

