



**MH v JMM (Family Originating Summons 5 of 2020)
[2025] KEHC 3002 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3002 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
FAMILY ORIGINATING SUMMONS 5 OF 2020**

**G MUTAI, J
MARCH 6, 2025**

BETWEEN

MH APPLICANT

AND

JMM RESPONDENT

RULING

1. This court, in its judgment delivered on 2nd December 2022, issued the following orders:-
 - a. That the properties herein below have been ascertained to have been acquired during the subsistence of marriage and therefore constitute matrimonial property for division in equal share at the ratio of 50% to 50%:-
 - i. Plot number 14XX, Section/VI/MN, Kwa Hola;
 - ii. Subdivision Number 21XX, Section/VI/MN; house without land on Plot Number 19XX/VI/MN;
 - iii. Unregistered parcel of land at Miritini;
 - iv. Unregistered parcel of land at Magongo area;
 - v. Bamburi plot with 10 rooms.
 - b. That in the event any of the above properties have changed hands without the consent of the applicant, the respondent is to compensate the applicant the amount equivalent to the value of her 50% entitlement;
 - c. In the event that the property is not capable of physical division, the same be valued by a mutually agreed valuer and then sold, and the proceeds realized therefrom be distributed equally; and



- d. That this being a family-related dispute, each party shall bear own costs.
2. The court provided for what would happen if some of the properties were found to have been sold and stated expressly that:-
- “That in the event any of the above properties have changed hands without the consent of the applicant, the respondent is to compensate the applicant the amount equivalent to the value of her 50% entitlement.”
3. The said judgment was not challenged by way of appeal or review. It is binding on the parties.
4. Feeling that the respondent was dragging his feet and wanting to conclude the matter as quickly as possible, the applicant filed an application dated 11th July 2023 seeking the provision of accounts, the appointment of a valuer and an order that the properties identified by Onyiego, J as being matrimonial properties to be sold by public auction. The said application was allowed by this court vide a ruling delivered on 2nd February 2024.
5. Pursuant to the judgment and the ruling of this Court, the valuation of properties identified as matrimonial properties by Onyiego, J was done by the government valuer. The respondent’s counsel contended that her client didn’t take part in the valuation exercise, having been informed about it late. This Court notes that no objection was raised on 10th and 20th February 2025 when the matter was mentioned in the presence of both counsels. In the circumstances, I find no merit in the objection.
6. Parties all agreed that Plot Nos 19XX and 21XX were sold. That being the case, paragraph 45(b) of the judgment becomes applicable. Mrs. Ogoti submitted that these properties were sold during coverture and that the proceeds may presumably have been shared. I do not agree that these two properties shouldn’t be reckoned. If I did that, I would be rewriting the judgment of Onyiego, J. The said judgment is very clear and requires no elucidation. I won’t do any such thing, nor do I have the jurisdiction to.
7. Since both properties were valued, in the aggregate, as being worth Kes.5,600,000/-, the applicant’s is Kes.2,800,000/-. I order that the respondent pays the applicant the said amount within 60 days failing which the applicant will be at liberty to execute with a view to recovering the same.
8. I order that the remaining properties be sold within 90 days of this date. The proceeds therefrom shall be divided equally on 50:50.
9. To monitor compliance and for further orders, this matter will be mentioned on 1st July 2025. No orders as to costs.
10. Orders accordingly.

Dated and signed at Mombasa this 6th day of March 2025. Delivered virtually via Microsoft TEAMS.

Gregory Mutai

JUDGE

In the presence of: -

Ms Mwashushe, for the Applicant;

Mrs Ogoti, for the Respondent; and

Arthur - Court Assistant.



