



**TRM (Suing as the Legal Representative of MAM - Deceased) v TMM (Civil Case 1 of 2023) [2025] KEHC 9873 (KLR) (Family) (4 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9873 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
CIVIL CASE 1 OF 2023  
PM NYAUNDI, J  
JULY 4, 2025  
IN THE MATTER OF THE MATRIMONIAL PROPERTY ACT 2013  
AND  
IN THE MATTER OF THE LAND REGISTRATION ACT**

**BETWEEN**

**TRM (SUING AS THE LEGAL REPRESENTATIVE OF MAM - DECEASED) ..... APPLICANT**

**AND**

**TMM ..... RESPONDENT**

**RULING**

1. Vide Originating Summons dated 21<sup>st</sup> March 2023, presented under Article 45(3) of the [Constitution of Kenya](#), Sections 1A & 1B of the [Civil Procedure Act](#), Sections 2,6,7,9,12 (3) (4) (5), 17 and 18 of the [Matrimonial Property Act](#), 2013, Section 93 of the [Land Registration Act](#), 2012 the Applicant seeks that-
  1. A declaration that all that property referred to as, plot number LR No. [particulars withheld] situated in [particulars withheld] area presently occupied, possessed let and managed by the Respondent is a property acquired by joint effort and contribution of MAM (deceased) and the Respondent herein.
  2. A declaration that all that property referred to as plot number [particulars withheld] situated in [particulars withheld] issued by [particulars withheld] presently occupied, possessed, let and managed by the Respondent is a property acquired by joint efforts and contributions of MAM (deceased) and the Respondent herein



3. A declaration that all the property referred to as plot number LR No. [particulars withheld] and property referred to as Plot No.[particulars withheld] in [particulars withheld] area is matrimonial property belonging to both parties, both bearing equal rights over the said properties and is nontransferable and / or leasable and / or mortgageable and / or can be let and / or lone party grant occupancy to a non- owner without consent of both parties.
  4. An Order that the Respondent be restricted and/ or restrained from evicting, threatening or barring the Applicant from access living in and / or carrying on any activity within the matrimonial property
2. The Applicant is the step son to the respondent and the biological son of the deceased who until her death was married to the respondent. In affidavit sworn on 21<sup>st</sup> March 2023 he avers that the properties were acquired through the joint effort between the deceased and the respondent. The properties are registered in the respondent's names. He contributed towards the construction and development on the plots as he supervised the construction.
  3. The respondent vide affidavit sworn on 21<sup>st</sup> July 2023 opposes the application and challenges the jurisdiction of this Court and the competence of the Originating Summons.
  4. As the issue of jurisdiction had been raised the Court directed that parties address it on jurisdiction as a preliminary issue, both parties have filed their respective submissions.
  5. The Applicant submits that the Court has jurisdiction and relies on Section 93 of the [Land registration Act](#), 2012 for the contention that the deceased had a legally recognizable interest in the suit properties. He further relies on the Court of Appeal decision in [MNK v POM](#) [2019] eKLR. The Applicant seeks to safeguard the interests of his mother in the suit property.
  6. He also relies on the decisions [in Re Estate D M M \(Deceased\)](#) (Succession Cause 131 of 2017) [2018] KEHC 6321 on the rights of children born within a marriage. The decision in [Jane Wanjiru Kiarie & Another v Maria Wanjiku & Another](#) [ 2008] eKLR on the rights of children to family land. [Re Estate of Chege Muikaria \(Deceased\)](#) [2016] eKLR on determination of rightful beneficiaries to the estate of a deceased person and [TMW v FMC](#) [2018] eKLR on the Court that has the jurisdiction to adjudicate over matrimonial property disputes.
  7. The Respondent is categorical that the court lacks jurisdiction. It is submitted that the Originating Summons does not disclose any cause of action known in law and it is therefore frivolous, vexatious and an abuse of the Court process. He cites the following authorities in support of the assertion of the limits of the matrimonial Court; [Hamida Sadiq Valomohamed \(Suing as the Personal Representative of the Estate of Shabbier Sidik Omar \(Deceased\) v Gulf Bank Limited & Anor](#) [2021] eKLR; [Re Estate of Joseph Masila Mutiso \(Deceased\)](#) [2017] eKLR; [Re Estate of JMM \( Deceased\)](#) [2020] eKLR.
  8. Having considered the submissions, the issue for determination is whether the applicant has the capacity to lodge the originating Summons. I note that rule 4 of the [Matrimonial Property Rules](#) sets out the parties who can commence proceedings under the [Matrimonial Property Act](#)-
    4. Persons by whom proceedings may be instituted
 

Any person, including the following persons, may institute civil proceedings claiming any right or relief in relation to matrimonial property—

      - (a) a spouse;



- (b) any person against whom a spouse has made a conflicting claim in respect of property; and
- (c) a trustee in bankruptcy, an executor under a will or other testamentary grant, an administrator or a personal representative, of the estate of a spouse for an order or declaration relating to the status, ownership, vesting, or possession of any specific property by, or for the beneficial interest of, a spouse or former spouse. (Emphasis Supplied)

9. The Applicant presents the Petition in his Capacity as the Legal Representative of the Estate of the deceased having obtained Grant of letters of Administration *Ad Litem* on 13<sup>th</sup> March 2023.
10. The Originating Summons is therefore competent before the Court to the extent that it is presented on behalf of the Estate of the deceased MAM. Having determined so, the Originating Summons will proceed to hearing.
11. Owing to the relationship between the parties, there shall be no order as to costs.

It is so ordered

**SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 4<sup>TH</sup> DAY OF JULY 2025.**

**P. M. NYAUNDI**

**JUDGE.**

In the presence of:-

No Appearance by Parties

Fardosa Court Assistant

