



**JNK v BKK (Matrimonial Cause E038 of 2023)
[2025] KEHC 13156 (KLR) (Family) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13156 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MATRIMONIAL CAUSE E038 OF 2023
HK CHEMITEI, J
SEPTEMBER 25, 2025**

BETWEEN

JNK CLAIMANT

AND

BKK RESPONDENT

RULING

1. This ruling relates to the applications dated 1st October, 2024 and 23rd May, 2025 filed by the Applicant, Jane Ndaisi Kyengo.
2. The application dated 1st October, 2024 seeks for Orders That:
 1. Spent.
 2. Notice to show cause do issue to the Respondent to show cause why he should not be committed to civil jail and ordered to pay a sum of monies as penalty for being in contempt of court orders given on 2nd June, 2023.
 3. This honourable court be pleased to issue and order for committal to prison against the Respondent for a period of six months for disobeying the court order made on 2nd June, 2023.
 4. The Applicant be allowed to withdraw money from the joint account now domiciled at Co – operative Bank A/C No. 0119285566xxxx, directly with notification to the Respondent and to the court for accountability in order to implement the expenses listed on the consent dated 2nd June, 2023.



5. This honourable court be pleased to grant leave to the Applicant to amend her originating summons as per the annexed draft Amended Originating Summons annexed hereto.
 6. The Respondent be at liberty to file an amended reply to the Amended Originating Summons within fourteen (14) days of the granting of leave herein.
 7. The costs of this application be in the cause.
3. The application is based on the grounds thereof and supported by affidavit sworn by Jane Ndaisi Kyengo on 1st October, 2024.
 4. She avers inter alia that this court, on 2nd June, 2023, adopted the consent dated 31st May, 2023 as a court order regarding the use of income from the property known as L.R. No. 27253/59 in Mavoko Municipality. Clause 2 of the consent sets out the use of this income as follows: (a) for the children's needs, including education, food, clothing, medical care and entertainment; (b) for maintenance of the property, including statutory dues, utilities, caretaker salaries, septic tank emptying and upkeep of the family home; and (c) any remaining surplus to be shared equally between the claimant and Respondent.
 5. She averred that despite these clear terms, the Respondent has continually frustrated the consent. For instance, he delayed signing the cheque for employee salaries for September 2024, only doing so on 21st September, 2024 after considerable effort.
 6. She has previously filed two contempt applications, dated 12th September, 2023 and 21st May, 2024, which are still pending. The Respondent's refusal to timely sign cheques for employee salaries from the joint account constitutes clear contempt. He obstructs compliance with the consent by imposing conditions requiring his money to be signed for first, before school fees or other obligations; Insisting on meeting in insecure or suspicious locations to sign cheques; Using delaying tactics and ignoring timelines for paying bills and workers, signing cheques at his discretion; Frustrating property maintenance, disregarding tenant welfare and blocking access to service funds; Failing to provide adequate funds for food, medical, clothing, entertainment and children's needs; Being abusive and disruptive during cheque-signing, causing her psychological distress.
 7. Consequently, and unless the court enforces its authority and punishes the Respondent, the integrity and dignity of the court will continue to be undermined. She fears continued financial strain and hardship for herself and her children.
 8. She went on to depone that the parties have since divorced under MCDC No. E664 of 2023, with a decree absolute issued. Given these circumstances, it is just and in the interest of justice that the pleadings or originating summons be amended accordingly.
 9. The application is opposed vide replying affidavit sworn by Ben Kyengo Kilonzi on 24th November, 2024.
 10. He avers inter alia that the Applicant has previously filed two applications seeking similar orders, dated 12th September, 2023 – which has already been decided - and 23rd May, 2024, which is still pending before this honourable court. Consequently, the current application is res judicata, without merit, an abuse of court process and should be dismissed at the outset.
 11. He said that he has fully complied with the consent order dated 31st May, 2023. Rental income from L.R. No. 27253 at Mavoko Municipality is paid directly by tenants into the agreed joint account and



- has been applied to the children's needs, property maintenance and workers' salaries. All the children continue their studies uninterrupted and all expenses, including medical bills, have been met.
12. Regarding the incident involving their son Allan Kyengo on 12th May, 2024, the Respondent attempted to coordinate with the Applicant but was consistently ignored. He only learned of the hospital bill through the application dated 23rd May, 2024. He has never refused to pay and contends the Applicant seeks exclusive control of the rental income and is filing repeated applications with unsubstantiated claims.
 13. The Respondent asserts that the Applicant has issued cheques without proper explanation, disregarding their agreement on expenditure management, often causing unnecessary disputes. He emphasizes that all expenses, including salaries of household assistants, have been discussed and managed in line with their consent, and that she has sometimes diverted funds for personal use.
 14. Both parties agreed that the Applicant would manage the cheque book(s), with the Respondent signing agreed cheque(s). Allegations that he delays signing or meets her at odd times are false. He contends the Applicant's repeated applications are intended to exclude him from managing rental income, despite him having solely contributed to the property's acquisition and development.
 15. He urges the court to set a hearing date for the main cause to render a final judgment, rather than allowing repeated, baseless applications that obstruct the expeditious resolution of the matter.
 16. The application dated 23rd May, 2024 seeks for ORDERS THAT:
 1. Spent.
 2. Notice to show cause do issue to the Respondent to show cause why he should not be committed to civil jail and ordered to pay a sum of monies as penalty for being in contempt of court orders given on 2nd June, 2023.
 3. This honourable court be pleased to issue an order for committal to prison against the Respondent for a period of six months for disobeying the court order made on 2nd June, 2023.
 4. The Applicant be refunded the sum of Kshs.122,677/= from the joint account now domiciled at Cooperative Bank A/C No.0119285566xxxx.
 5. The Applicant be allowed to withdraw money from the joint account now domiciled at Cooperative Bank A/C No. 0119285566xxxx
 6. The costs of this application be in the cause.
 17. The application is based on the grounds thereof and supported by affidavit sworn by Jane Ndaisi Kyengo on 23rd May, 2024.
 18. She avers inter alia that this court, on 2nd June, 2023, adopted the consent dated 31st May, 2023 as an order governing the use and application of income from the property known as L.R. No. 27253/59. Clause 2 of the consent provides that the income is to be applied as follows: To meet the children's needs, including education, food, medical expenses, clothing and entertainment; To maintain the property, including payment of statutory dues, utilities, caretaker's salary, septic tank emptying and salaries for workers at the parties' Malili home; and Any surplus remaining after these expenses is to be shared equally between the claimant and Respondent.



19. She went on to state that on 12th May, 2024, their son Allan was hospitalized due to a poisoning incident at the Applicant's home, resulting in his admission until 17th May, 2024. The police are investigating the incident, which also led to the death of their nanny. The Respondent was informed of the incident on 12th May, 2024 but failed to attend the hospital.
20. The Applicant also notified him the day before their son's discharge regarding the required hospital fees, but he refused to authorize any withdrawal from the joint account. Despite communication via their legal representatives on 15th May, 2024 requesting funds for treatment and discharge, the Respondent persisted in refusing to release funds, citing lack of prior notification and details. Consequently, the Applicant had to cover the hospital expenses, including payments to Meridian Equator Hospital Limited, Mater Misericordia Hospital and AAR Syokimau Clinic, from her personal funds and borrowed money.
21. The consent order explicitly stipulates that the property income should cover such expenses, and not her personal income. The Respondent's refusal to authorize payment constitutes contempt of court.
22. Further, compliance with the consent has increasingly been hampered by the Respondent's repeated refusal to sign cheques, often necessitating that the Applicant leave work to secure signatures. For example, payments for workers' salaries for April were only processed on 20th May, 2024 after resistance, and hospital bills on the same day faced similar delays.
23. To prevent further interference with her employment, the Applicant proposes that all bank transactions occur between 1:00 pm and 2:00 pm at a designated bank, preferably Cooperative Bank HQ along Haile Selassie Avenue.
24. Due to the Respondent's continued non-compliance, the Applicant seeks a refund of Kshs. 122,677/= from the joint account and emphasizes that she continues to suffer significant financial hardship, forced to use her limited personal resources. Unless the Court enforces its authority and penalizes the Respondent, the dignity and authority of this Honourable Court remain at risk. This represents the second contempt application filed due to the Respondent's persistent disobedience of the 2nd June, 2023 court orders.
25. The application is opposed vide replying affidavit sworn by Ben Kyengo Kilonzi on 24th November, 2024.
26. He avers inter alia that the Respondent has fully complied with the consent order dated 31st May, 2023. Rental income from L.R. No. 27253 at Mavoko Municipality is paid directly by tenants into the agreed joint account and has been applied to the children's needs, property maintenance and workers' salaries. All the children continue their studies uninterrupted and all expenses, including medical bills, have been met.
27. Regarding the incident involving their son Allan Kyengo on 12th May, 2024, the Respondent attempted to coordinate with the Applicant but was consistently ignored. He only learned of the hospital bill through the application dated 23rd May, 2024. He has never refused to pay and contends the Applicant seeks exclusive control of the rental income and is filing repeated applications with unsubstantiated claims. The Respondent asserts that the Applicant has issued cheques without proper explanation, disregarding their agreement on expenditure management, often causing unnecessary disputes.
28. The Applicant has filed written submissions, on both applications; and the same dated 26th May, 2025. She places reliance on the following:



- a. Gibson Ikuku Munaga vs Teachers Service Commission & Another [2022] eKLR where the court cited, with approval, the Court of Appeal case Ochieng and Others vs First Bank of Chicago Civil Appeal No. 147 of 1991 where the court set out the principles under which the courts may grant leave to amend pleadings as follows: “a. The power of the court to allow amendments is intended to determine the true substantive merits of the case. b. The amendments should be timeously applied for. c. Power to amend should be exercised by the court at any stage of the proceedings. d. That as a general rule however later the amendments sought to be made should be allowed if made in good faith provided costs can compensate the other side. e. The plaintiff will not be allowed to reframe his case or his claim if by an amendment of the plaint the defendant would be deprived of his right to rely on Limitations Act subject, however, to powers of court to still allow the amendment.”
29. The Respondent has filed written submissions, on both applications; and the same dated 3rd June, 2025. He places reliance on the following:
- a. Mombasa High Court Civil Appeal No. E291 of 2023: Abdi Isaac Omar t/a Sabrin Shop vs High Rise Commodities where the court cited with authority the finding in the case of Maumbwa & 3 Others vs Kisemei (Civil Appeal E009 of 2021) (2022) KEHC 10416 (KLR) (26 May 2022) (Judgment) in which the court stated as follows: “By comparing the two applications and the authorities on res judicata, it is clear to me that the issues being canvassed in the application dated 11th January, 2021 is res judicata. The issues in issue in that application were directly and substantially in issue in the application dated 13th September, 2017. These issues relate to the same parties and these issues have been tried by a competent court. To my mind the same issues between the same parties that have been determined by a court of competent jurisdiction is an abuse of the court process.”

Analysis And Determination

30. I have read the applications before this court and the responses thereto and the rival submissions as well as cited authorities.
31. The two applications in essence are seeking similar prayers save for one prayer on amendment of the Originating Summons by virtue of the concluded divorce proceedings number MCDC NO E664 OF 2023.
32. As a matter of fact, since there is no objection to the same and in view of the need to expedite the determination of this suit the same ought to be allowed.
33. On the sticky issue of the consent and in particular the management of the income from the rental amount I think the issue shall remain contentious until the suit is determined. The consent the parties entered was elaborate and there should not have been any problem in its implementation.
34. The signing of the cheques and its delay or not is a matter which is between the two parties. It has not been suggested that the premises are not bringing in any income or at all. Or is there any reason to suggest any difficulty in its management.
35. Obviously, the property must be maintained, workers paid etc. the children’s needs including school fees and medical expenses they agreed in the consent comes from the rental proceeds.
36. The Respondent did not contest the fact that the Applicant paid for their son’s medical bill after the unfortunate incident of poisoning. She thus ought to be refunded from the rental income account.



37. In my view the only detail which the parties failed to agree and which is the thread that runs in all the application is the time frame of signing the cheques by either of them. From the affidavits of the Applicant her contention is that there is delay by the Respondent and other conditions before he signs the same.
38. This becomes difficult if there is no definite period for signing. Either of them can dilly dally or issue demands which frustrates the other party.
39. This court and for the series of applications filed herein cannot sit and wait for another application to enforce the consent. There must be a definite period in which either of them must have countersign the cheques. This court will exercise its authority and ensure that justice is served and no breach of the orders blatantly by either of them is repeated.
40. In this regard and assuming that tenants ordinarily remit the rent at least by the fifth day of each month I find it reasonable that all the cheques ought to be signed by the 10th day of each month. These cheques must be signed in accordance with the consent dated 31st May, 2023.
41. The rider however is on bills such as medical or fees which period may not be determined. The same must be signed three days after being presented by either of the parties.
42. More importantly and recognising that this is a stop cap measure, the suit must be fixed for hearing forthwith so as to sort ought the issues bedevilling the former couple.
43. In the premises these are the orders in respect to the two applications:
 - (a) The Claimant/Applicant is hereby granted 14 days to amend and serve her originating summons from the date herein and the Respondent granted 14 days after service to file any response if any.
 - (b) The Applicant be refunded vide the funds in the Account Number 0119285566xxxx Cooperative Bank the sum of Kshs 122,677 being amount expended in the medical treatment of their son Allan Kyengo.
 - (c) From the date of this ruling all the cheques must be signed by either of the parties by the 10th day of each succeeding month and in default the Deputy Registrar of this court is allowed to sign as an alternative signatory.
 - (d) The parties do fix for hearing the suit forthwith.
 - (e) Costs shall await the outcome of the suit.

DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 25TH DAY OF SEPTEMBER 2025.

H K CHEMITEI

JUDGE

