



GDM v CMM (Matrimonial Cause 14 of 2019) [2024] KEHC 3776 (KLR) (4 April 2024) (Ruling)

Neutral citation: [2024] KEHC 3776 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MATRIMONIAL CAUSE 14 OF 2019
EM MURIITHI, J**

APRIL 4, 2024

IN THE MATTER OF MARRIAGE ACT, 2013

AND

IN THE MATTER OF ARTICLE 45 (3) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF ORDER 37 OF THE CIVIL PROCEDURE RULES

BETWEEN

GDM PLAINTIFF

AND

CMM RESPONDENT

RULING

1. By a Notice of Motion under certificate of urgency dated 29/6/2023 brought under Order 40 Rules 1 and 2 of the [Civil Procedure Rules](#), Section 3A of the [Civil Procedure Act](#) and Section 12 of [Matrimonial Property Act](#), 2013 and all enabling provisions of law, the Applicant seeks that;
 1. Spent
 2. Pending the hearing and determination of the originating summons herein this court be pleased to issue an order reinstating the Plaintiff/Applicant into one of the matrimonial home built on L.R No. Nkuene/Taita/859.
 3. Pending the hearing and determination of the originating summons herein this court be pleased to issue a mandatory order compelling the Respondent to stay away from the said matrimonial home.
 4. Pending the hearing and determination of the originating summons herein this court be pleased to issue an order by way of an injunction barring the Respondent from interfering



with the Plaintiff/Applicant's quiet enjoyment and occupation or dealing in any manner detrimental to the Applicant with the matrimonial home built on Nkuene/Taita/859.

5. The O.C.S Meru Police Station do ensure compliance with the Orders issued in this matter.
6. The costs be in the cause.
2. The grounds upon which the application is founded are set out in the body of the application and supported by an affidavit sworn by the Applicant on even date. She avers that she had been married to the Respondent for over 35 years prior to the dissolution of their marriage in Meru High Court Divorce Cause No. 1 of 2019. At the start of their union, they did not own any property, and they established their first matrimonial home in Meru where upon they purchased L.R NO. NKUENE/TAITA 398/162 where they resided until 2002. They subsequently purchased L.R NO. NKUENE/TAITA/859, which was their second matrimonial home and acquired other properties with the Respondent during the subsistence of the marriage. Despite their marital problems, they lived together as husband and wife until 2014 when the Respondent started making technical appearances to their matrimonial home and on 1/5/2019, the Respondent evicted her from their second matrimonial home built on NKUENE/TAITA/859. She believes that one of the reasons for her eviction from their second matrimonial home was because it was being used as a wines and spirits warehouse, which made it insecure as strangers accessed the compound when picking and delivering of the alcohol. In High Court Divorce Cause No. 1 of 2019, she was granted alimony to a tune of Ksh.150,000 monthly vide the ruling of 19/9/2019. Via a consent order dated 19/9/2019, the said amount was reduced to Ksh.130,000 which the Respondent paid once on 21/11/2019 and has since refused to pay any further amount and has refused to attend court and a warrant of arrest was issued. On 1/10/2020, after approximately one year of the Respondent's frustrations and refusal to pay the Ksh.130,000, the court ordered that she collects rent from tenants occupying the property No. Ntima/Ntakira/417. She started receiving rental income into her KCB account after she had notified the tenants that the rent was to be paid directly to her. Although that the rental income from that property was only an average of Ksh. 40,000 since the said building was not fully occupied, the residue is about Ksh. 20,000 after payment of electricity and other utility bills. The divorce court dismissed her claim for alimony but did not pronounce itself on the issue of the collection of rental income from L.R No. Ntima/Ntakira/417 hence creating confusion on whether she should continue collecting the rent or not. The Respondent stated that during the divorce proceedings she was at liberty to occupy and use the matrimonial home built on L.R No.Nkuene/Taita/859 since he resides on LR No. 23980/45 IR No. 5611 at Kenya Re in Meru. She contributed both directly and indirectly to the acquisition and development of both matrimonial homes yet the Respondent continues to exclusively enjoy both homes. She is now 63 years and without access to the family business, it is already too late for her to start life a fresh since she had put all her sweat, tears and hard work into building the massive family business empire with the Respondent who in turn frustrated all her efforts and cast her out into the cold. She is in real danger of becoming a destitute despite having worked hard during the subsistence of the marriage and prays for the application to be allowed.
3. The Respondent filed grounds of opposition on 11/10/2023 that:
 1. In the Divorce Petition, alimony in among others provision of housing was prayer number 2 and the same was expressly disallowed in the judgment annexed to the supporting affidavit.
 2. The current application is in the form of an appeal or review of that aspect of the divorce judgment which is an abuse of the due process of this Honorable Court.
 3. Per ground No. c of the application the Applicant left the subject parcel of land on 1/5/2019 before the filing of the said divorce cause.



Submissions

4. The Applicant urges that the divorce court only dealt with alimony but failed to address ancillary provision in form of reinstatement into the matrimonial home. She urges that she is entitled to be reinstated into her matrimonial home, having contributed directly and indirectly towards its acquisition and development, and cites *NWM v KNM* (2014) eKLR, *White v White* (200) UKHL 54, *Njoroge v Ngari* (1985) KLR 480 and *JW v CWM* (2017) eKLR. She urges that the issuance of an injunction will ensure peace is maintained between the parties pending the hearing and determination of the originating summons, and cites *Giella v Cassman Brown & Co. Ltd* 1973 Ca, *Nguruman Ltd v Jan Bonde Nielsen & Others* (2014) eKLR, *Kenya Commercial Finance Co. Ltd v Afraba Education Society* (2001) Vol 1 EA 86 and *MMK v JMN* (2018) eKLR. She urges that she is at the risk of being rendered destitute and homeless, and it is therefore in the interest of justice that the application is allowed.
5. The Respondent urges that the alleged failure by the divorce court to address the ancillary relief of housing ought to be remedied through an appeal and not through an application in a court of concurrent jurisdiction. He urges that the interim prayers sought herein are final in nature as they are not supported by the main claim in the originating summons dated 1/7/2019. He urges that the application is incompetent and meritless as it goes against the purview of the main suit.

Analysis and Determination

6. Having read the application and the response, the issue that this court discerns for determination is whether the prayers sought should issue.
7. The Applicant contends that the Respondent kicked her from her matrimonial home, while the Respondent contends that the issue of housing was expressly disallowed by the court.
8. In its ruling of 19/1/2019 in Meru High Court Divorce Cause No. 1/2019, the court (Hon. A. Ong'ino J) addressed this issue at page 9 as follows:

“...Although, it is not in dispute that she is not currently in the matrimonial home this court is of the opinion that the demand for rent and upkeep amounting to Ksh. 400,000/- is on the higher side. This court hereby orders that the Respondent pays out to the applicant Ksh. 150,000/= per month with effect from the time the suit was filed for rent, electricity, water, food, fuel and sundry expenses. The Respondent is also hereby ordered to surrender to the applicant motor vehicle KBR 389 S. The OCS Nkubu Police Station to give security to the applicant while she removes the furniture of her choice from the matrimonial home.”

9. It appears the Respondent defaulted on remittance of the monthly maintenance sum of Ksh. 150,000 and he was required to show cause why he should not be committed to civil jail. The parties subsequently entered into a consent order on 13/11/2019 when it was agreed:

- “ 1. That the Notice to show Cause is hereby stayed on conditions listed as follows in paragraph (2 & 3).
2. That the Respondent is hereby ordered to deposit Ksh. 130,000 (One Hundred and thirty thousand in the Petitioner's Account held at Kenya Commercial Bank (KCB) Account No. 1266134794 within 7 (Seven) days).
3. That the rental income from the properties proposed by the Respondent of Ksh. 130,000 shall also be deposited in the Petitioner's Account held at



Kenya Commercial Bank (KCB) Account No. 1266134794 with effect from 10th December, 2019 and subsequently on every 10th day of the month until payment in full.

4. That the matter be mentioned on 25th November, 2019 to confirm compliance and further directions and or orders.”
10. The adamant and evasive Respondent proceeded undeterred to disobey the consent order and he was unsurprisingly committed to civil jail. In its ruling of 1/10/2020, the court (Hon. Anne Adwera Ong’ingo J) rendered thus:

“ As I had stated earlier in this Ruling where a spouse deserves to be paid maintenance in the event of divorce or separation, the law must be enforced to ensure that a deserving spouse enjoys spousal support so as to maintain the standard of life he or she was used to before the separation or divorce. It is more than five years since the Petitioner separated with the Respondent. She has been living in a desolate state while the Respondent enjoys the benefits of the matrimonial properties...The Petitioner is hereby given the go ahead to serve tenants occupying L.R. NTIMA/NTARIKA/417 with this court order to deposit rent in A/C No. 1266134794 held in Kenya Commercial Bank in the Petitioner’s names forthwith.”
11. The court finds that the issue of the Applicant’s shelter and other ancillary needs was conclusively addressed by the court, in its earlier decisions as shown hereinabove.

Orders

12. Accordingly, for the reasons set out above, this court finds the Applicant’s application dated 29/6/2023 is without merit and it is dismissed.
13. Costs in the Cause.
Order accordingly.

DATED AND DELIVERED THIS 4TH DAY OF APRIL, 2024.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

M/S Machirah & Muriki Co. for the Plaintiff/Applicant.

M/S Mwenda Mwarania Akwalu & Co. Defendant/Respondent.

