



**JKW v RWM; LNK (Interested Party) (Civil Suit E018 of 2022)
[2024] KEHC 7452 (KLR) (Family) (20 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7452 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL SUIT E018 OF 2022
HK CHEMITEI, J
JUNE 20, 2024**

BETWEEN

JKW APPLICANT

AND

RWM RESPONDENT

AND

LNK INTERESTED PARTY

RULING

1. In his application dated 23rd March 2022 the Applicant prays for the following orders:-
 - (a) That pending the hearing and determination of this suit the Respondent and the Interested Party be and hereby restrained from disposing by way of transfer or selling or in any other way adversely dealing with land parcel number [Particulars Withheld] together with buildings and developments thereon.
 - (b) That the Interested Party be ordered to transfer the said parcel of land in the joint names of the Applicant and the Respondent within 120 days from the date herein.
 - (c) That the Registrar of the High Court be authorised to sign the transfer documents and any other related documents thereof in place of either the Respondent and or the Interested Party in default of them signing the same.
 - (d) That the costs of transfer of the suit property from the Interested Party to the joint names of the Applicant and the Respondent including stamp duty payable and other related charges be shared equally between the Applicant and the Respondent.



- (e) Costs be provided for.
2. The application is based on the grounds thereof and the Applicant's affidavit and the annexures thereto sworn on 23rd March 2022.
 3. The Respondent has opposed the application as well as the Originating summons vide her replying affidavit sworn on 11th May 2022.
 4. The Interested Party as at the time of writing this ruling has not filed any opposition to the application.
 5. The parties were directed to file written submissions so as to dispose the application. They have both complied. The court has perused the same extensively and need not reproduce them here.
 6. The issues herein are clear and straight forward. From the evidence on record the Applicant and the Respondent were husband and wife having solemnised their marriage on 13th December 2006. The said marriage was dissolved on 15th March 2022 vide Divorce Cause No. 11 of 2021 at Kikuyu law court.
 7. The Respondent however disputes the same arguing that she was never involved nor notified of the divorce proceedings or at all and that she only learned of it when she was served with the decree. There is no evidence nonetheless that the same has been set aside and as far as this court is concerned the same is still subsisting.
 8. In the cause of their marriage the Applicant and the Respondent purchased the suit property from the Interested Party although it went through some succession proceedings. The dispute however is the ratio of contribution of each of the parties.
 9. The Respondent on her part believes that she contributed 80% while the Applicant contributed 20%. Each one of them has a schedule of what they believed is their respective amount. Their rival affidavits have sufficient annexures in support of their claim.
 10. At this juncture I think it is too early to know how much each one of them contributed. It is however evident that the same is actually a matrimonial property having been acquired at the subsistence of their marriage.
 11. It appears from the deposition of the Respondent that the Interested Party has been willing to transfer the property save that he needed to know under whose name. The Respondent believes for instance that the same ought to be transferred to her as she contributed more.
 12. The analysis of this court is that it is appropriate that pending the determination of this cause and in particular the contribution ratio of the Applicant and the Respondent, the property be transferred in their joint names first. None of them will suffer any prejudice. I believe it shall be to their comfort and security.
 13. In any case the Interested Party has got no claim over the same having fully received the purchase consideration. The Applicant and the Respondent can thereafter proceed to have the matter determined through viva voce evidence and production of the relevant evidence which shall be tested by way of cross examination.
 14. The above line has been well articulated in the respective submissions.
 15. In the premises the application is allowed as hereunder:
 - (a) The Interested Party herein within sixty (60) days from the date herein is hereby directed to transfer land parcel number [Particulars Withheld] to the joint names of both the Applicant and the Respondent.



- (b) The conveyancing charges to effect the above transfer shall be met equally between the Applicant and the Respondent.
- (c) Pending the above transfer a restraining order by way of a temporary injunction is hereby issued against the Applicant, the Respondent and the Interested Party from adversely dealing with the suit property or the developments thereon.
- (d) Parties are at liberty to fix the matter for hearing
- (e) Costs shall await the outcome of the main suit.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 20TH DAY OF JUNE 2024.

H K CHEMITEI

JUDGE

