



**JOO v MBO (Miscellaneous Application E237 of 2023)
[2024] KEHC 8014 (KLR) (Family) (14 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 8014 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E237 OF 2023
PM NYAUNDI, J
JUNE 14, 2024**

BETWEEN

JOO APPLICANT

AND

MBO RESPONDENT

RULING

Introduction

1. Before this court for determination is the Notice of Motion dated 19th September 2023 brought at the instance of JOO (the Applicant) seeking the following orders: -
 1. That the Honourable Court be pleased to enforce the judgment and decree of the Supreme Court issued on 27th January 2023 by;
 - a. Ordering for independent valuation and sale by public auction of the matrimonial house and rental units on Nairobi Block 97/564 and sharing of proceeds between the parties in the ratio of 50:50
 - b. Ordering the respondent to vacate and or be evicted from the matrimonial house and rental units on Nairobi Block 97/564 to enable valuers and potential buyers have access to the property for viewing and possibly the sale of the same.
 - c. Ordering the Registrar of Land to remove caveat registered under Nairobi Block 97/564 through the application of the Respondent to enable the sale to take place and proceeds shared at 50:50 as ordered by the court.



- d. Ordering the OCPD Embakasi to assist in eviction from main house on Nairobi Block 97/564.
2. That the Honourable Court be pleased to order the Respondent to account for rent collected from main house on Nairobi Block 97/564 from the date of judgment of the High Court in Civil Case No. 18 of 2010 (OS) delivered on 2nd February 2017 and to factor the same in sharing of the proceeds of the sale of the properties.
3. That the costs of this suit be provided for.
2. The Application was premised upon Section 27 of the Supreme Court Act, 2011, Rule 30(2) of the Supreme Court Rules, 2020, the inherent powers of the Honourable Court, and all other enabling provisions of the Law, and was supported by the Affidavit of even date sworn by the Applicant.
3. The Respondent opposed the application vide grounds of opposition dated 4th March 2024 on the following grounds;
 - a. The decision of the Supreme Court ought to be enforced through the primary suit HCCC No. 18 of 2010 (O.S) and not through a miscellaneous case.
 - b. The matters sought to be enforced were not in the decree of the Supreme Court.
 - c. A number of remedies sought are outside the jurisdiction of the High Court.
 - d. There is no rent collected in the main house as the Respondent resides there with her children as captured in all previous judgments and prayer 2 is unwarranted, *res judicata* and an abuse of court process.
4. The Order that the Applicant seeks to enforce stems from the decision of the Supreme Court in which it affirmed the decision of the Court of Appeal to overturn the judgment of the High Court with the result that the parties were found to be entitled to a 50:50 share of the matrimonial property comprising; matrimonial house erected on Nairobi/ Block 97/ 564 in Tassia Estate, Embakasi and rental units thereon.
5. Pursuant to directions that the Application be canvassed via written submissions, the Applicant filed submissions and supplementary submissions dated 10th January 2024 and 27th January 2024

Analysis And Determination.

6. I have looked at the pleadings along with submissions filed herein as well as the relevant law. I discern the following as the issues for determination;
 - i. Whether the Notice of Motion is Competent and has merit.
 - ii. Who should pay costs
7. It is argued that the High Court lacks the jurisdiction and that the decision ought to be enforced through the primary suit HCCC No.18 of 2010 and not through a miscellaneous cause. Section 27 of the Supreme Court Act provides:
 27. Decisions of the court may be enforced by the High Court.
A judgment, decree, or order of the Supreme Court may be enforced by the High Court as if it had been given or made by the High Court.
8. Further Rule 30 of the Supreme Court Rules, 2020 provides-



1. The Registrar shall certify every decision of the Court for transmission to the High Court for execution.
 2. An order or a decree of the Court may be enforced as if it were an order of the High Court
9. On judicial precedent, in *David Pkosing v National Super Alliance & 13 others* [2017] eKLR, Mwita J stated:
55. I must admit however, that this court has power to enforce decisions of the Supreme Court. Section 27 of the *Supreme Court Act* (No 7) of 2011 provides that a judgment, decree, or order of the Supreme Court may be enforced by the High Court as if it had been given or made by the High Court. For this to happen, there must be a judgment or decree capable of being enforced if this court were to call into operation section 27 of the *Supreme Court Act*.'
10. The argument by the Respondent that this court does not have jurisdiction to enforce a decree or order of the Supreme Court is therefore not sustainable.
 11. As to whether the decision of the Supreme Court ought to be enforced through the primary suit and not the instant miscellaneous application, both Section 27 of the *Supreme Court Act* and Rule 30 of the *Supreme Court Rules*, 2020 do not prescribe the manner of presenting the application of execution. Order 51 rule 1 of the *Civil Procedure Rules* provides that applications to Court be by Notice of Motion.
 12. I find that the Application as presented is competent. The Respondent does not challenge the history of litigation. Her protest is limited to form. The rights of each party have been determined. This is a matter that falls squarely within Article 159 (2)(d) of the *Constitution* of Kenya. The Applicant seeks to enforce the decision of the Supreme Court, guided by the requirement that the Court pursue substantive justice, I find this an appropriate case to find that a litigant who approaches the Court for justice must never leave empty handed.
 13. In the end, the notice of Motion dated 19th September 2023 is merited, allowed and the following orders made-
 1. Counsel for the Respondent and Applicant to agree on an Estate Agent/ Valuer within 21 days from the date hereof. In the event Counsel are unable to agree Counsel for the Applicant shall identify and appoint a valuer within 14 days of the default.
 2. The Estate Agent/ Valuer appointed under (1) above will prepare and submit a report on the valuation of both the matrimonial house and the rental units on Nairobi Block 97/564, within 21 days from the date of appointment. The fees for the Estate Agent/ valuer to be shared equally between the Respondent and the Applicant.
 3. The Respondent and Applicant to open a joint account for receiving the rental income from the units on Nairobi Block 97/564 within 7 days from the date hereof. Rental income from the units to be deposited monthly into the account effective 30th June 2024. The Respondent shall pay out to the Applicant his 50% share of the rental income so collected (less expenses) by the 7th day of each successive month effective 7th July 2024. In the event the parties are unable to agree on this arrangement, then the rental units shall be sold in accordance with valuation conducted under (2) above.



4. Respondent will have first right of purchase of both the matrimonial house and the rental units within 90 days of the offer being made by buying out the Applicant and paying to the Applicant 50% of the value of the properties plus his 50% share of the rental income collected from the rental units from 2nd February 2017. If she fails to do so the properties shall be sold out by the Estate Agent/ Valuer appointed under (1) above and the proceeds shared out equally between the parties (this after meeting all expenses and deducting for the Applicant his 50 % share of the rental income collected from the rental units from 2nd February 2017 to date of payment).
5. The Respondent shall bear the costs of this Application.

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 14TH DAY OF JUNE 2024.

P M NYAUNDI

JUDGE

In the presence of:

Fardosa Court Assistant

Odhiambo Advocates for the Applicant

Waweru Advocates for the Respondent

