



**EMM v MNM (Civil Appeal E032 of 2022) [2024] KEHC 10332 (KLR) (16 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 10332 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CIVIL APPEAL E032 OF 2022  
GMA DULU, J  
JULY 16, 2024**

**BETWEEN**

**EMM ..... APPELLANT**

**AND**

**MNM ..... RESPONDENT**

**RULING**

1. This matter or appeal was determined through a judgment delivered on 25<sup>th</sup> April 2024 by Justice Ongijo.
2. The appeal, which was filed by EMM was dismissed after the learned Judge found that the trial Magistrate rightly safeguarded the interests of the respondent MNM and the children of the marriage, pending litigation on the issue of matrimonial property.
3. Thereafter, on 30<sup>th</sup> April 2024, MNM the respondent in the appeal, filed the present Notice of Motion under section 4(2) & (3), 6(1), 23, 24(1), 82, 83, 90, 91, 96, 98, 113 of the [Children Act](#) and the [Civil Procedure Act](#) seeking the following orders:-
  - 1 (Spent).
  - 2 (Spent).
  3. That the court be pleased to issue an order compelling the appellant to show cause why he should not be committed to civil jail for failing to comply with the court orders issued on 25<sup>th</sup> April 2024.
  4. That the court be pleased to issue a warrant of arrest for committal to civil jail against the appellant herein for failing to comply with the court order issued on 25<sup>th</sup> April 2024.
  5. That the costs of this application be in favour of the plaintiff.



4. The application has grounds on the face of the Notice of Motion that on 25<sup>th</sup> April 2024 the court dismissed the appeal but that on 27<sup>th</sup> April 2024 after the judgment, the appellant locked the house without any court order and the respondent (applicant) and the children cannot access the house where their belonging are; and that the appellant has taken the law into his own hands.
5. The application was filed with a supporting affidavit sworn on 30<sup>th</sup> April 2024 by MNM amplifying the grounds of the application and deponing that she had reported the matter to the OCS Maktau Police Station.
6. The application was opposed through a replying affidavit sworn on 14<sup>th</sup> May 2024 by the appellant EMM in which it was deponed that the application was baseless and without merit; that no evidence was filed in the application to support the allegations; that it was not true that the applicant was evicted and new padlocks put on the doors by him; that an earlier similar application had been filed by the same applicant in September 2023; that from the reading of the Judgment of Ongijo J. paragraph 19 it was clear that the Judge stated that the appeal lacked merits as the injunction orders of the trial court lapsed on 8<sup>th</sup> January 2023; that the trial court's orders of injunction of 6 months to protect the applicant were issued in isolation and not dependent on any other occurrence.
7. The application was canvassed through written submissions. In this regard, the applicant respondent (MNM) filed written submissions, while the appellant/respondent (EMM) relied on the replying affidavit he filed.
8. I have considered the application, as well as the submissions and affidavits of the parties. It is apparent to me that though EMM is denying putting new padlocks to the house doors, his affidavit is contradictory and cannot thus be taken seriously. He asks for evidence to prove the putting of new padlocks, but at the same time says that there were no court orders in force protecting the applicant against him doing such an act, as the injunctive court orders issued by the trial court had lapsed on 8<sup>th</sup> January 2023. It is thus clear that he has not denied putting the new padlocks.
9. That said however, the trial Magistrate's orders having already lapsed on 8<sup>th</sup> January 2023, the issue turns on the interpretation of the judgment on appeal delivered by this court on 25<sup>th</sup> April 2024.
10. From my understanding of paragraphs 15 to 19 of the said judgment of this court on appeal delivered (Onginjo J) ,on 25<sup>th</sup> April 2024, there is nothing to be enforced by either side herein through such an application arising from that judgment.
11. In particular, in the judgment under paragraph 16 of the said judgment, the court noted that the injunctive orders earlier issued by the trial court, though justified, had actually lapsed on 8<sup>th</sup> January 2023, and the learned Judge pointed this out clearly.
12. From paragraph 18 of the same judgment also, the issue as to whether the subject house was the matrimonial house was noted by the learned Judge as not having been before the Magistrate for adjudication, and thus the protection or injunctive orders issued by the trial Magistrate were merely to safeguard the interests of MNM the applicant, and the children of the marriage pending litigation on the issue of matrimonial property. Since I have not been told that this appeal relates to the litigation on matrimonial property. I leave that issue there and cannot comment further on it.
13. In my view therefore, the orders sought in the present application can only be considered and issued in the litigation for determining the issues matrimonial property, and not in this appeal.



14. I thus find that the present application has been filed in the wrong cause and thus unmerited. I dismiss the application herein dated 30<sup>th</sup> April 2024. This being a domestic or family matter, parties will bear their respective costs of the application.

**DATED, SIGNED AND DELIVERED THIS 16<sup>TH</sup> DAY OF JULY 2024 IN OPEN COURT AT VOI.**

**GEORGE DULU**

**JUDGE**

In the presence of:-

Alfred/Trizah – Court Assistants

MNM – applicant

EMM – respondent

