



REPUBLIC OF KENYA



**MMK v JJM & another (Matrimonial Cause 1 of 2019)  
[2024] KEHC 9165 (KLR) (19 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9165 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MATRIMONIAL CAUSE 1 OF 2019**

**HM NYAGA, J  
JULY 19, 2024**

**BETWEEN**

**MMK ..... APPLICANT**

**AND**

**JJM ..... 1<sup>ST</sup> RESPONDENT**

**RK ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Applicant vide a Notice of Motion dated 26<sup>th</sup> September, 2023 brought under Article 45(3) of the [Constitution](#) and Section 7 of the [Matrimonial Property Act](#) seeks the following orders: -
  - a. That this Court be pleased to permit the Applicant and the 1<sup>st</sup> Respondent to sell their Matrimonial Property known as Njoro/Ngata Block 7/379(Chumo) and the proceeds thereof be shared equally between them.
  - b. That the Honourable Court be pleased to direct or order that prior to the sale, a valuation of the property be carried out to ascertain its actual current market value.
  - c. That costs of the Application be provided for.
2. The Application is premised on grounds:
  - a. That the Applicant and the 1<sup>st</sup> Respondent's Marriage solemnized through a church wedding on 7<sup>th</sup> December, 1988 was legally dissolved and a decree absolute issued in Nakuru Chief Magistrate's Court Divorce Cause no. 64 of 2020.
  - b. That in a Judgement delivered by this Honourable Court on 10<sup>th</sup> March, 2022, the subject property was declared to be a matrimonial property jointly owned in equal share between the



Applicant and the 1<sup>st</sup> Respondent and the Title Deed processed and issued in the name of the 2<sup>nd</sup> Respondent revoked/cancelled.

- c. That in the same judgement, the Honourable Court held in abeyance orders relating to the prayers sought for the disposal of the subject matrimonial property pending dissolution of their marriage.
  - d. That currently, the Applicant lives in solitary and boring life within the Matrimonial Home whose environment is now devoid of any sentimental value or attachment but full of unhealthy thoughts unsuitable for the Applicant at his age and phase of life.
  - e. That the marriage having been absolutely dissolved, the 1<sup>st</sup> Respondent having deserted the Matrimonial Home in 2017 and the children being married and busy with their own jobs and families; nothing now legally or factually prevents the Honourable Court from granting the orders sought herein.
  - f. That the Property is now in the name of the Seller as per the related Sale agreement upon revocation of the transfer and registration in the name of the 2<sup>nd</sup> Respondent.
  - g. That the said seller has authorized his agent based in Nakuru on his behalf to engage in any transactions including authority to execute sale and transfer documents in relation to the subject property.
  - h. That legally and factually, the property is therefore capable of being disposed of in the name of the current status.
  - i. That it is unfair, unjust and imprudent to keep the Applicant imprisoned within the now unhealthy environment whereas the sale of the property would not be prejudicial to any of the parties herein.
  - j. That the prayers sought herein are beneficial and in the best interest of both the Applicant and the 1<sup>st</sup> Respondent in the obtaining circumstances and the Honourable Court is espoused with the discretion and jurisdiction to grant the prayers sought.
3. The Application is supported by an Affidavit of the Applicant herein reiterating the above grounds.
  4. The Respondent did not file any response. There is no affidavit of service on record to confirm she was served with this application.

### **Analysis & Determination**

5. The singular issue for determination is whether the orders sought are merited.
6. This court rendered a judgment on 10<sup>th</sup> March, 2022 declaring Parcel known as Njoro/Ngata Block 7/379(Chumo) a matrimonial property in equal shares.
7. The evidence on record also shows that the parties herein are no longer a husband and a wife. Their marriage was dissolved in Nakuru Chief Magistrate's Court Divorce Cause no. 64 of 2020.
8. In *M v M*, (*supra*) In *M v M*, [2008] 1 KLR 247 (G&F) the court held that: -

“In applications under section 17, the court has a wide and unfettered discretion to make such order or orders as justice may demand including sale and distribution of property subject of the application”



- 9. Guided by the above case and having considered the application, the grounds thereto and supporting affidavit, I am satisfied that this application is fit for granting. No party will be prejudiced should the court grant the orders sought.
- 10. I therefore order that the aforesaid matrimonial property be valued and sold and the proceeds shared equally and in the alternative, either party is at liberty to purchase the other's share.
- 11. Each party to bear their own costs.
- 12. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAKURU 1TH DAY OF JULY, 2024.**

.....

**H. M. NYAGA,  
JUDGE.**

In the presences of:

C/A Jeniffer

No appearance for the parties.

