



JWM v JNM (Civil Case 29 of 2014) [2024] KEHC 12590 (KLR) (17 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12590 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL CASE 29 OF 2014
EM MURIITHI, J
OCTOBER 17, 2024
IN THE MATTER OF SHARING MATRIMONIAL PROPERTY
AND
IN THE MATTER OF MARRIED WOMEN PROPERTIES ACT

BETWEEN

JWM PLAINTIFF

AND

JNM DEFENDANT

RULING

1. By a Notice of Motion under Sections 1A, 1B, 3 & 3A of the [Civil Procedure Act](#), Order 51 Rule 1 of the Civil Procedure Rules, the Defendant seeks reliefs that:

1. This Honorable Court be pleased to give further directions as to the manner of the implementation of this Honorable Court’s judgment dated and delivered on 24th day of April, 2023.
2. This Honorable Court be pleased to order that the assets of the matrimonial property comprised in the schedule below be wholly transferred to Joel Nthamburi M’mburugu the Defendant/Applicant:-

Schedule

- a. Plot No. Ntima/ntakira/XXXX
- b. L.r No. Abothuguchi/gaitu/XXXX
- c. Kiamuri ‘a’/XXXX



- d. L.r No. Abothuguchi/gaitu/XXX
 - e. L.r No. Abothuguchi/gaitu/XXXX
 - f. L.r No. Abothuguchi/gaitu/XXXX
 - g. L.r No. Abothuguchi/gaitu/XXXX
 - h. L.r No. Abothuguchi/gaitu/XXXX
 - i. L.r No. Abothuguchi/gaitu/XXXX
 - j. L.r No. Abothuguchi/gaitu/XXX
 - k. L.r No. Abothuguchi/gaitu/XXX
 - l. L.r No. Abothuguchi/gaitu/XXXX
 - m. Plot No. XXXX Chaaria Market
 - n. Plot Nos. XXXX Gaitu
3. The remaining properties and assets forming part of the matrimonial property be transferred to the plaintiff.
4. The costs be in the cause.
2. The application is premised on the grounds on the face of it and supporting affidavit of the Defendant/Applicant herein sworn on even date. He avers that Plot No. Ntima/Ntakira/XXXX is where he lives with his second wife and it is only fair that the same and the other properties listed hereinabove are registered in his name. He humbly urges the court to approve his mode of implementation and leave the rest of the matrimonial properties to the Plaintiff.
3. In her replying affidavit sworn on 3/8/2023, the Plaintiff avers that she is not opposed to the registration of Plot No. Ntima/Natkira/XXXX in the name of the Defendant. She requests the court to award the Defendant all the plots he owns in Zimmerman Settlement Scheme Society. She has attached her own schedule of the properties she desires and urges the court to adopt it.

Submissions

4. The Defendant/Applicant proposes that Plot Nos. Gaitu XXXX, should remain with the Plaintiff, which are all in prime areas where she has established income earning businesses. He urges the court to adopt his schedule which he considers fair and just to both parties. On her part, the Plaintiff/Respondent urges the court to adopt her schedule dated 3/8/2023.

Determination

5. By its judgment of 24/4/2023 the court ordered that:
- “The Plaintiff shall get half (50%) share of the properties listed in the Schedule, as amended by the Judgment and as existing at the date of the Judgment, and for that purpose the said properties shall be divided between the plaintiff and the defendant equally.”
6. Having failed to agree on how to implement the 50% share of each party, the Defendant filed the instant application seeking the court’s intervention.



7. The Plaintiff has relinquished her claim over L.R No. Ntima/Ntakira/XXXX which is the matrimonial home of the Defendant and his second wife. The Plaintiff has also consented to registration of all the Zimmerman Settlement Scheme Society properties in the name of the Defendant. The Defendant is equally not laying a claim on L.R No. Abothuguchi/Gaitu/XXXX, Abothuguchi/Gaitu/XXXX, Abothuguchi/Gaitu/2116, Abothuguchi/Gaitu/1436, Gaitu XXXX and Motor Vehicle Registration No. KCE XXXX C.
8. The bone of contention is the division of Abothuguchi/Gaitu/1716, Abothuguchi/Gaitu/XXXX, Abothuguchi/Gaitu/XXXX, Abothuguchi/Gaitu/XXXX, Abothuguchi/Gaitu/XXXX, Abothuguchi/Gaitu/1104, Kiamuri XXXX Gaitu Market - Chaaria.
9. The court is minded that a literal application of the 50:50 sharing ratio of the contested properties may be impractical in this case because some properties are said to be more valuable than others. Such infeasibility was considered in P N N v Z W N [2017] eKLR, where the Court of Appeal (Kiage JA.) dealt with the principle of marital equality under Article 45(3) of *the Constitution* as follows:

“Does this marital equality recognized in *the Constitution* mean that matrimonial property should be divided equally? I do not think so. I take this view while beginning from the premise that all things being equal, and both parties having made equal effort towards the acquisition, preservation or improvement of family property, the process of determining entitlement may lead to a distribution of 50:50 or thereabouts. That is not to say, however, that as a matter of doctrine or principle, equality of parties translates to equal proprietary entitlement.

The reality remains that when the ship of marriage hits the rocks, flounders and sinks, the sad, awful business of division and distribution of matrimonial property must be proceeded with on the basis of fairness and conscience, not a romantic clutching on to the 50:50 mantra. It is not a matter of mathematics merely as in the splitting of an orange in two for, as biblical Solomon of old found, justice does not get to be served by simply cutting up a contested object of love, ambition or desire into two equal parts. I would repeat what we said in Francis Njoroge vs. Virginia Wanjiku Njoroge, Nairobi Civil Appeal No. 179 of 2009:

“... a division of the property must be decided after weighing the peculiar circumstances of each case. As was stated by the Court of Appeal of Singapore in Lock Yeng Fun v Chua Hock Chye [2007] SGCA 33;

‘It is axiomatic that the division of matrimonial property under Section 112 of the Act is not – and, by its very nature cannot be – a precise mathematical exercise’.”

10. Since the Defendant has willingly surrendered his 50% share of Gaitu XXXX to the Plaintiff, it is only just that he retains ownership of Plot Nos. XXXX Gaitu Market – Chaaria and Kiamuri XXXX.
11. Consequently, the court finds the schedule proposed by the Defendant to be equitable and fair, in view of his renunciation of his claim to most of the properties in the Plaintiff’s schedule to her.

Orders

12. Accordingly, for the reasons set out above, this court allows the Defendant/Applicant’s application dated 20/6/2023 in terms of prayers Nos. 2 and 3 thereof.
 13. There shall be no order as to costs.
- Order accordingly.



DATED AND DELIVERED THIS 17TH DAY OF OCTOBER, 2024.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Karanja for Plaintiff.

Ms. Mugo for Defendant.

