



**LWK v CMN (Matrimonial Cause E011 of 2024)
[2024] KEHC 14551 (KLR) (11 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14551 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MATRIMONIAL CAUSE E011 OF 2024
DO CHEPKWONY & DO CHEPKWONY, JJ
NOVEMBER 11, 2024
IN THE MATTER OF SECTION 2, 6, 7 AND 17 OF THE
MATRIMONIAL PROPERTY ACT NO. 49 OF 2013**

BETWEEN

LWK APPLICANT

AND

CMN DEFENDANT

RULING

1. The Plaintiff filed Originating Summons dated 30th April, 2024 which seeks the following orders:-
 - a. That the Honourable Court be pleased to grant an order of injunction restraining the Defendant from selling, offering for sale, charging, leasing, transferring or otherwise dealing with the suit premises Ruirumugutha 1/1XXX, Nairobi/Block 8X/2XXX, Ruiru Block Mugutha Block /T1XXX, Kirinyaga /Ndia/Kiarangana Property in Kirinyaga County.
 - b. That the Honourable Court be pleased to order and compel the Respondent to hand over the management and control of the property known as Ruiru/Mugutha Block 1/T.1580 to the applicant and the Respondent be accountable in respect to all rental derived from this property as well as Ruiru/Mugutha 1/1XXX Kirinyaga /Ndia/ Kiarangana Property since separation in June 2021 to the date of Judgment in this cause.
 - c. That the Honourable Court be pleased to issue a Declaration that the property known as Ruiru/Mugutha Block 1/T.1580 (situated in Ruiru within Kiambu County) and registered in the name of Lilies Wanjiku Kuria the applicant herein is not a matrimonial property and belongs to the Plaintiff absolutely.



- d. That the Honourable Court be pleased to issue a Declaration that the properties known as Nairobi/Block 8X/2XXX registered in both parties, Ruiru/Mugutha 1/1XXX registered in the name of the Plaintiff are subject to litigation Kirinyaga/Ndia/Kiarangana Property registered in the name of the Respondent are matrimonial properties held for the beneficial interest of both parties and shared equally.
 - e. That the Honourable Court be pleased to issue an Order directing that the properties referred to as Nairobi/Block 8X/2XXX, Ruirumugutha 1/1XXX, Kirinyaga/ Ndia/Kiarangana Property be valued and sold and the proceeds from the sale be shared equally between the parties within 60 days from the date of the order and directing the Respondent to produce land ownership documents relating to matrimonial property in Ndia Kiarangana Kirinyaga County and the proceeds of sale of Young Line Cargo Forwarders Limited for distribution.
 - f. That the Honourable Court be pleased to issue a restraining order against the respondent from harassing, contacting, coming close (within 50 meters), intimidating the petitioner and from posting, communicating, sharing information about the petitioner on Facebook and other social media platforms, mobile phones about the petitioner pending the hearing and determination of this application cause.
 - g. That the costs of this Summons be provided for.
2. When the matter came before court on 11th November, 2024, the Plaintiff/Applicant's Counsel indicated that the Defendant/Respondent had been served with the pleadings and notice but he had not filed any response to the Originating Summons. Consequently, the Plaintiff's Counsel through letter dated 23rd September, 2024 urged the court to enter Judgment in default of Defence pursuant to Order 10 Rule 4 of the Civil Procedure Rules.
 3. The court has perused the record and established that despite being served with the pleadings filed by the Plaintiff/Applicant herein, the Respondent has neither entered appearance nor filed a Defence to the Originating Summons dated 30th April, 2024. This is confirmed by the Affidavit of Service sworn by Zakayo Gukunda Ngari on 13th May, 2024 which indicates that the Respondent was personally served with the bundle of pleadings comprising of the court order of 3rd May, 2024, the Notice of Motion application dated 30th April, 2024 and the Originating Summons dated 30th April, 2024 together with their respective Supporting Affidavit.
 4. The court further takes note of the Amended Notice of Motion dated 16th May, 2024 which was served as confirmed in the Affidavit of service of Valerio Mwathi Njue sworn on 27th May, 2024 which shows that the Respondent was served with Amended Notice dated 16th May, 2024. There is another affidavit sworn on 19th September, 2024 confirming that the Mention Notice for 23rd September, 2024 was also served upon the Respondent. All the services were done through his Whatsapp Mobile Number +254 722 648 995 which confirms that the Respondent is well aware of the matter in court but has not entered appearance or filed any response.
 5. The Applicant has made this application pursuant to Order 10 Rule 10 of the Civil Procedure Rules which states:-

“The provisions of Rules 4 to 9 inclusive shall apply with any necessary modification where any Defendant has failed to file a defence”
 6. A reading of the Rules 4 to 9 indicate that the mandatory procedure is that the Applicant ought to make a formal request under Form 13 of Appendix A. However in this case the Applicant has filed



the same through a letter to the court which cannot be overlooked as a procedurally technicality given that the wordings of the Order 10 Rules 4 to 9 are all couched in mandatory terms. The court shall then direct the Plaintiff/Applicant to move the court in the rightful manner before it can proceed to issue the orders sought.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 11TH DAY OF NOVEMBER , 2024.

D. O. CHEPKWONY

JUDGE

In the presence of:-

M/S Murugi holding brief for Mr. Njue counsel for Plaintiff

No appearance for and by Defendant/Respondent

Court Assistant - Martin

