



**PN v OSM (Matrimonial Cause E071 of 2022)
[2024] KEHC 15405 (KLR) (Family) (12 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15405 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MATRIMONIAL CAUSE E071 OF 2022
EKO OGOLA, J
NOVEMBER 12, 2024**

BETWEEN

PN APPLICANT

AND

OSM RESPONDENT

RULING

1. The application before this court is dated October 17, 2022. The applicant prays for the following orders:-
 - a. Spent;
 - b. That pending the hearing and determination of this suit this honorable court be pleased to restrain the respondent and/or his agents from selling, alienating, or charging the suit properties in any way;
 - c. Spent;
 - d. That pending the hearing and determination of this suit, this honorable court be pleased to order the respondent and one MA to vacate the matrimonial home on LR No. 195/192 at 3D Lane Karen so that the Applicant and the children can occupy the same.
 - e. Spent;
 - f. That pending the hearing and determination of this application, and in the alternative to (d) above, this honorable court be pleased to allow the applicant to enter the matrimonial home on LR No. 195/192 at 3D Lane Karen and retrieve some household items for her and the children namely: 1 set of cooking pot, 1 set of serving dishes, glasses, 1 fridge, 2 side tables, a white 5



seater couch, 1 television, 1 television stand, 1 coffee table, 3 beds, 1 mac computer, 1 study table, and a chair, and the applicant's personal effects.

- g. Spent;
 - h. That pending the hearing and determination of this application and in addition to (f) above, this honorable court be pleased to order the respondent to pay for the Applicant's rent amounting to Kshs. 115,000 per month.
 - i. That the commanding Karen Police Station be ordered to ensure compliance with the above orders and to provide security to the applicant;
 - j. That the costs of this application be costs in the cause.
2. The application was based on the grounds therein and the applicant's supporting affidavit. She deposed that after the divorce, she continued to live with her children in the matrimonial home. However, the respondent and one MA harassed and intimidated her till she had to flee from the said house without her personal effects. She deposed that the respondent is now living in the matrimonial home with MA, while she is forced to pay rent of Kshs. 115,000 per month.
 3. The respondent opposed the application. He deposed that the applicant has not provided evidence whatsoever proving the respondent's intention to dispose of property or adversely deal with the property. Furthermore, the respondent stated that LR No. 195/192 3D Lane Karen forms an integral part of his architectural practice. Therefore, he stands to suffer prejudice should the orders sought be issued.
 4. On whether the respondent should pay Kshs. 115,000 to the applicant to cover her rent, the respondent deposed that the applicant is an adult of means and as such is not entitled to maintenance.
 5. The application was canvassed by way of written submissions.

Determination

6. I have considered the applications, the affidavits and submissions as filed.
7. There are two issues for determination, first, whether injunction orders should issue and whether the respondent should pay the applicant's rent.
8. On whether injunction orders should issue, I refer to Rule 20 (2) of the Matrimonial Property Rules of 2022 which provides as follows; " A party to the proceedings may, before or after commencement of the proceedings under these Rules, but before the final determination of the respective claims, apply for temporary injunctions or other interlocutory orders in accordance with Order 40 of the Civil Procedure Rules, 2010, and the court may grant the orders sought on such terms or conditions as may be just in the circumstances."
9. The law under order 40 (1) of the Civil Procedure Rules provides as follows on the issue of when temporary injunctions can be granted:

Where in any suit it is proved by affidavit or otherwise—

- (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- (b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be



obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

10. The applicant has prayed for an injunctive order to restrain the respondent from dealing with the suit property in any way. She has not provided evidence that the respondent is attempting to alienate the said property. The applicant has only stated that the respondent is in occupation of the said property with one MA.
11. The question which therefore arises is whether the application meets the threshold set for the granting of orders of temporary injunction. In *Mrao Ltd v First American Bank of Kenya and 2 others*, (2003) KLR 125 which was cited with approval in *Moses C. Muhia Njoroge & 2 others v Jane W Lesaloi and 5 others*, (2014) eKLR, the Court of Appeal defined a prima facie case as: -

“ A Prima facie case in a civil application includes but not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later”.
12. The applicant has not provided any evidence of the respondent’s threats to deal with the property adversely. I am satisfied that the application has not met the threshold of grant of interlocutory injunctive orders.
13. However, since LR No. 195/192 3D Lane Karen is part of the properties for determination in this cause, I make an order of status quo to be maintained.
14. On the issue of whether the respondent should pay the applicant’s rent, Section 77(1) of the *Marriage Act* provides;

The court may order a person to pay maintenance to a spouse or a former spouse

 - (a) if the person has refused or neglected to provide for the spouse or former spouse as required by this Act;
 - (b) if the person has deserted the other spouse or former spouse, for as long as the desertion continues;
 - (c) during the course of any matrimonial proceedings;
 - (d) when granting or after granting a decree of separation or divorce; or
 - (e) if after making a decree of presumption of death, the spouse or former is found to be alive.
15. The provisions leave it to the discretion of the court on the granting of maintenance. The union was blessed with children who were still minors. The children are living with the applicant while the respondent continues to enjoy the benefits of the alleged matrimonial home. The respondent argued that the applicant is a woman of means and should not be paid maintenance. In the absence of an affidavit of means from both parties and considering the fact that the applicant is living with the two children while the respondent is enjoying the benefits of the alleged matrimonial home, I am satisfied



that the applicant is entitled to maintenance in the form of her rent being paid until the hearing and determination of this suit.

From the foregoing, I make these orders:

- a. With regards to LR No. 195/192 3D Lane Karen and the household items, status quo ante be maintained until the hearing and determination of this suit
- b. The respondent shall pay the applicant's rent of Kshs. 115,000 from the date of this Ruling and until the hearing and determination of this suit.
- c. Costs be in the cause.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12TH DAY OF NOVEMBER 2024

E.K. OGOLA

JUDGE

In the presence of:

Ms. Tole for the Applicant

Ms. Kihanja for the Respondent

Ms Gisiele M court Assistant

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