



**POM v MNK alias MNP (Civil Suit 6 of 2012)  
[2024] KEHC 15296 (KLR) (Family) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15296 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY  
CIVIL SUIT 6 OF 2012**

**HK CHEMITEI, J  
DECEMBER 5, 2024**

**BETWEEN**

**POM ..... APPLICANT**

**AND**

**MNK ALIAS MNP ..... RESPONDENT**

**RULING**

1. In his Notice of Motion dated 26<sup>th</sup> June 2023 the Applicant prays for the following orders:-
  - (a) That with effect from the month of July 2023 the Applicant be allowed unfettered authority to collect rent from the following specified units out of 34 units being on plot No. 29 within LR NO Dagoretti/Riruta/1XX;
    - (i) 3 one bed roomed units out of 11 such units.
    - (ii) 3 two bed roomed units out of 10 such units.
    - (iii) 5 shops out of 17 such units

OR as this court may deem fit to allocate, pending the full implementation of the judgement of the Supreme Court given in Petition No. 9 of 2021 as sought herein and or demonstrated in the decree already on record.
  - (b) That an order do issue compelling the Respondent to forthwith render before this court the accurate accounts with respect to the rental income collected from the use of both the commercial and residential units being on the suit plot herein namely plot number 29 within LR Dagoretti/Riruta/1XX since 27<sup>th</sup> September 2011 until end of June 2023 or such other end period as this court may determine.



- (c) That once the total amount of the rental income collected by the Respondent since September 2011 until end of June 2023 is ascertained an order do issue that the Defendant remits 30% thereof to the Plaintiff within thirty days of such ascertainment.
  - (d) That the Applicant be forthwith allowed by the Respondent unfettered access to the suit premises namely plot number 29 within LR NO. Dagoretti/ Riruta/1XX with the necessary professionals such as surveyors, physical planners, Valuers etc. to undertake necessary works to enable the Applicant in preparation of a professional road map for the full implementation of the Supreme Court judgement issued on 27<sup>th</sup> January 2023 so that the ratio of 70/30 is physically determined on the ground and if necessary submit the same in court.
  - (e) That the government surveyor in charge of the area within which the plot is situated be ordered by this court at the expense of the parties herein to undertake the exercise of physically implementing the Supreme Court judgement on the ground and file his/her report in court within ninety (90) days for adoption with or without amendments.
  - (f) That the police officer in charge of Muthangari police station under whose immediate police jurisdiction the suit property lies do enforce any orders made herein and or do provide security for the peaceful implementation of the same.
  - (g) Costs be provided for.
2. The application is based on the grounds on the face of it and the sworn affidavit of the Applicant dated even date. The substantive issue raised by the Applicant is the fact that he ought to be allowed to enforce the judgement of the Supreme Court by having a share of the 30% accorded to him.
  3. The Respondent has opposed the application herein vide her replying affidavit sworn on 28<sup>th</sup> July 2023 where she averred that this court cannot litigate over this matter as there is a pending Succession case No. 1161 of 1990, in the matter of the estate of the late John Muthiora Gathuna (deceased) In effect therefore the application ought to await the outcome of that cause.
  4. The Respondent has also argued that this matter is now a preserve of the Environment and Land court as this court lacks jurisdiction to entertain it as it relates to land and its related developments.
  5. The Respondent further denied the issues of the units as suggested by the Applicant in his affidavit and stated that there were 5 two-bedroom units, 14 one-bedroom units and 5 single room units.
  6. The issues herein are not difficult to appreciate. The Applicant and the Respondent lodged a Divorce Cause which was allowed. Subsequently they filed this suit which went all the way to the Supreme Court of Kenya vide Petition Number 9 of 2021.
  7. The decision of the Supreme Court was to the effect that the Applicant was entitled to 30% of the share in the property known as Dagoretti/Riruta/1XX and that the Respondent was entitled to 70%. The apex court declared that there was no marriage between the two parties.
  8. The effect of the said Supreme Court's judgement meant that it was final as regards any litigation between them and all that was left was the implementation of the same.
  9. The parties were directed to file written submissions which they have complied.
  10. The Applicant argued that that he was entitled to get the 30% share as directed by the apex court and further be allowed to collect the rent in arrears which the Respondent has been enjoying all along.



11. That the rent arrears as per his submissions amounted to Kshs.12,136,980 and that the Respondent be directed to provide detailed accounts of what she has received all along.
12. On the issue of dividing out the property the Applicant submitted that there was need to involve professional surveyors so that they can divide the portion in the ratio of 7:30 as directed by the Supreme court.
13. As regards the issue of the succession cause, he submitted that the Respondent cannot hide under the same as it was distinct from this matter and the Supreme court has already made the decision.
14. In terms of jurisdiction of the court he submitted that what was before this court was execution of the Supreme court's judgement which emanated from this court and it was not therefore true that this court was not seized of jurisdiction.
15. On his part the Respondent submitted on the main ground of jurisdiction. He stated that in view of the provisions of Article 162(2) of *the Constitution* it was the preserve of Environment and Land Court to deal with matters land and in this case since the issue revolves around occupation and use of the suit property this court is not seized with the jurisdiction.

### **Analysis and determination**

16. I have perused the submissions and the rival affidavits by the parties. It is true that this matter began in this court and finally ended up at the Supreme court. The said apex court found that there existed no marriage between the two but apportion the suit property at 70:30 per cent.
17. The best place to begin with is the argument by the Respondent that this court cannot execute the decision by the Supreme court as it lacks jurisdiction. I think that line of argument is far-fetched for the simple reason that this matter began in this court. The parties litigated all the way to the Supreme Court and finally what is before this court is still the same prayers the Applicants asked but varied.
18. If this court cannot execute then which other court can undertake the said process? To the extent that it began here it must be done here. It would have been different if the apex court directed otherwise. For now, this court is the proper forum to execute the judgement.
19. The existence of the Succession Cause No 1161 of 1990 dealing with the suit property essentially has no bearing to this matter in my considered view as it cannot alter the various courts decisions and more importantly that of the Supreme Court herein. The two can still argue their rights in the succession cause jointly as they have interest in the suit property just like the other objectors in that matter. Whatever the outcome will not affect the ratio as directed by the Supreme Court.
20. At the same time I do not think that what the Applicant is asking is out of his 30% right in the suit property. He should be allowed to enjoy the same. Since it is a developed property and as indicated another portion is undeveloped it is necessary to engage professionals to demarcate the two portions in the best way possible.
21. I however agree with the Respondent that the ultimate subdivision of the property must be undertaken through the usual land conveyancing protocols. To that extent the jurisdiction of this court ends and the Environment and Land court is invited. Nevertheless, that day is not yet due for the simple reason that the matter regarding Dagoretti/Riruta/1XX is still pending succession proceedings.
22. I therefore think that the only recourse for now is for the proceeds from the rental units to be shared out between the two parties in the ratio directed by the Supreme Court. It is not contested that the property is developed and bringing in monthly income although they are unable to agree on the number of units.



23. The best way is to engage the services of an estate agent to ascertain the number of units and the rent currently bringing in and the same be divided in the ratio of 70:30 respectively.
24. As regards prayer three of the application, the rent income which accrued from the premises, it is true the Applicant is entitled to 30% thereof. It appears that from the day he was kicked out of the premises in 2011 he has never benefited at all. There is no evidence to that effect. There is therefore no doubt that the Respondent has all along enjoyed the rent collected from the premises ever since.
25. The Applicant content that from September 2011 the total rental income was Kshs. 258,100 which later increased Kshs 277,100. This ought in the absence of any scientific prove to be analysed by a professional valuer or estate agent so as to give an accurate figure. Once the figures are ascertained the Applicant shall be entitled to 30% thereof from September 2011.
26. I think I have stated much to indicate that the application is merited and it is allowed as follow:-
- (a) The parties shall within 14 days from the date herein engage the services of a professional estate agent to manage the premises and collect monthly rent income and share the same between the parties at the ratio of 70% in favour of the Respondent and 30% in favour of the Applicant respectively.
  - (b) The Respondent shall within 30 days from the date herein render accounts of the rent she has collected from the property from 27<sup>th</sup> September 2011 to date and out of it pay out 30% thereof to the Applicant within 60 days.
  - (c) In default of (b) above the Applicant be at liberty to engage the services of an estate agent and or valuer to determine the rent so far collected by the Respondent within the stated period and demand the payment of 30% thereof from the Respondent.
  - (d) The actual subdivision of the property as directed by the Supreme Court up to and including the issuance of titles will await the outcome of the Succession Cause No. 1161 of 1990 (Misc. E120 of 2022)
  - (e) The Applicant shall have unhindered and complete access to the suit premises.
  - (f) The officer commanding Muthangari police station do ensure enforcement of the orders herein if need be.
  - (g) Costs shall be in the cause.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 5<sup>TH</sup> DAY OF DECEMBER 2024**

**H K CHEMITEI**

**JUDGE**

