



**RW v RK (Matrimonial Cause E015 of 2023)
[2024] KEHC 15588 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15588 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MATRIMONIAL CAUSE E015 OF 2023
A MSHILA, J
DECEMBER 6, 2024
IN HE MATTER OF: THE MARRIAGE ACT(2014)
AND
IN THE MATTER OF: THE MATRIMONIAL, PROPERTY ACT NO.49 OF 2013
AND
IN THE MATTER OF: AN APPLICATION FOR DIVISION OF MATRIMONIAL PROPERTY**

BETWEEN

RW APPLICANT

AND

RK RESPONDENT

RULING

1. Before court is the application by way of Notice of Motion dated 31st October, 2023 and brought under Order 40 Rules 1 and 2 of the Civil Procedure Rules, 2010, Section 3A of the Civil Procedure Act, Section 12(3) of the Matrimonial Property Act No. 49 of 2013 and all other enabling provisions of the law. The Applicant sought for orders that:-
 - a. Spent;
 - b. That pending the hearing and determination of the Originating Summons herein this Court be pleased to issue a mandatory order compelling the Respondent to deposit all proceeds from the rent collected from renting the matrimonial home from August 2022 on Parcel No. Kiambaa/ Kanunga/ xxxx in a joint account to be opened by the parties herein or as the court deems fit until further orders of this court.



- c. That pending the hearing and determination of the Originating Summons herein this Court be pleased to issue a mandatory order compelling the respondent to furnish this court with a detailed record of all rental proceeds received from the rent collected from the matrimonial home on parcel number Kiambaa/Kanunga/xxxx beginning August, 2022 to date.
2. The application is premised on the grounds that the parties were married in the year 1999 and the marriage broke down in 2022 and the parties are now divorced. The Applicant contributed directly or indirectly towards the acquisition of the matrimonial properties as such has rights over the properties.
3. The application is supported by the affidavit of RW. She deposed that she got married to the Respondent in 1999 and their divorce was finalized in 2023. In 2006 they purchased their matrimonial home situated in Kiambaa/Kanunga/xxxx at Kshs. 950,000/= where she gave out Kshs. 150,000/= in cash and that her mother gave them Kshs. 350,000/= in cash and the Respondent contributed Kshs. 450,000/= totaling to Kshs. 950,000/=. She deposed that they were blessed with three issues and that they also acquired Motor Vehicle Registration Number KCY xxxP. The Applicant worked as a Secretary and the Respondent worked as a Teacher as such she was financially able to support the family and the household. The Respondent's duties were to pay electricity and school fees while she catered for food, clothing, medical expenses, water as well as paying the house girl. She contended that she also assisted the Respondent in renovating the matrimonial home as well as the Respondent's business. She averred that for 23 years, she undertook domestic work, management of the home, child care and companionship but due to the Respondent's cruelty she left the matrimonial home on 21st July, 2022 and upon returning in August, 2022 she found out that the Respondent had already rented it out without her consent as from 14th August, 2022. Further, she stated that on 19th November, 2019 she had applied for a car loan where the matrimonial property was the security and the Respondent acted as the guarantor. On 16th February, 2023, the Respondent sent a demand letter to the Applicant to substitute the security and the guarantor whereas they had acquired the property together and she was not in default of the loan. The Applicant avers that she has rented a house where she resides with her 3 children as well as pays the rent and house hold bills. Lastly, she avers to having rights over the properties as she has a share in the purchase and maintenance of the home.
4. The Respondent herein, RK filed his Replying Affidavit in opposition to the Applicant's application dated 20th November, 2023. He denied purchasing the suit property with the Applicant as he bought the property with his savings which property costed Kshs. 880,000/= and not Kshs. 950,000/= as alleged by the Applicant. He averred that the Applicant's mother advanced to him Kshs. 350,000/= which he duly paid back. He contended that he takes care of the children's fees, medical care and monthly shopping. He deposed that he indeed moved out of the house and rented it out and that he uses the rental proceeds for the children's educational needs. He stated that the children are his responsibility until they become of age. He denied knowledge of any loans taken out by the Applicant save for the car loan.
5. Subsequently, the parties were directed to file their written submissions. However, the Applicant failed to file her submissions in regard to the issues of rental proceeds and commencement date as directed by the court.

Respondent's Submissions

6. The Respondent submits that a mandatory injunction is a final order and can only be issued at the interlocutory stage in special circumstances which is not the case herein. Reliance was placed in the case of *Gabriel Turic Dak vs Eldoret College of Professional Studies & Another* (2021) eKLR. The proceeds of the rent were said to aid in paying school fees. In regard to the commencement date, the court was said



to assume jurisdiction from 30th March, 2023 when the marriage was dissolved. Reliance was placed in the case of *EKTM v ECC* (2021) eKLR. Lastly, the court was urged to dismiss the application with costs to the Respondent.

Issues for Determination

7. Having considered the Applicant's application, the Replying Affidavit and the Respondent's submissions, the main issue for determination is whether the Applicant is deserving of the mandatory orders sought at this stage.

Analysis

8. The Applicant seeks for a mandatory order that the Respondent deposits all proceeds from the rent collected from the matrimonial home from August 2022 on parcel Number Kiambaa/Kanunga/xxxx in a joint account as well as furnish this court with a detailed record of all rental proceeds received from the rent collected from the matrimonial home.
9. She avers that she contributed Kshs. 150,000/= towards the purchase of the matrimonial home as well as its renovation. She averred that for 23 years she undertook domestic work, management of the home, child care and companionship as such she is entitled to a share of the matrimonial home.
10. The Respondent avers that he solely purchased the suit property which costed him Kshs. 880,000/= and that he refunded the Kshs. 350,000/= advanced to him by the Applicant's mother. He contended that he rented out the matrimonial house and that he uses the rental proceeds for the children's educational needs. The Respondent denied knowledge of any loans taken out by the Applicant save for the car loan.
11. In the case of *Hezron Kamau Gichuru v Kianjoya Etrprises Ltd & Another* (2022) eKLR Omollo J. relied on the following decisions of the Court of Appeal to offer guidance in regard to mandatory injunctions. The case of *Joseph Kaloki t/a Royal Family Assembly Vs Nancy Atieno Ouma* (2020) eKLR the Court of Appeal reaffirmed its decision in *Kenya Breweries Limited & Another Vs Washington O. Okeyo* (2002) eKLR and stated that:-

“a mandatory injunction can be granted on an interlocutory application as well as at the hearing but should not normally be granted in the absence of special circumstances but that if a case is clear and which the court thinks it ought to be decided at once, a mandatory injunction will be granted at an interlocutory application.”
12. The Court also reaffirmed its decision in *Shariff Abdi Hassan vs Nadhif Jama Adan* (2006) eKLR where it stated that:-

“The courts have been reluctant to grant mandatory injunction at the interlocutory stage. However, where it is prima facie established as per the standards spelt out in law as stated above that the party against whom the mandatory injunction is sought is on the wrong, the courts have taken action to ensure that justice is meted out without the need to wait for full hearing of the entire case.”
13. At this point the court is being called to determine whether the Applicant has a right over the matrimonial property so that she can be entitled to a share of the rental income. This court finds that both parties need to adduce evidence of their contribution both monetary and non-monetary towards the purchase and development of the matrimonial home so as to determine each parties' rights.



14. The court at this point cannot rule with certainty that the Applicant indeed contributed Kshs. 150,000/= towards the purchase of the matrimonial home as alleged and/or whether the Respondent utilizes the rental income for the childrens' school fees and other educational needs as alleged. The parties will be required to prove their claims by way of a hearing as such the orders sought by the Applicant are found to be pre-mature at this stage.
15. Bearing in mind the above, this Court is satisfied that there exist special circumstances in this matter that necessitate that warrant the granting of the mandatory orders as sought by the Applicant at this interlocutory stage.

Findings and Determination

16. For the forgoing reasons, this Court makes the following findings and determinations:-
 - a. The application is found to be partially meritorious.
 - b. A mandatory order be and is hereby granted that the Respondent deposits all future proceeds from the rent collected from parcel number Kiambaa/ Kanunga/xxxx in a joint account in the names of counsel for the parties pending the hearing and determination of the suit;
 - c. Furnishing of Rentals proceeds received by the Respondent from parcel number Kiambaa/ Kanunga/xxxx in a joint account from August 2022 to date is an issue to be determined at the full hearing hereof;
 - d. Each party to bear their own costs.
 - e. Mention on 25th February, 2025 to fix a hearing date.

Orders Accordingly.

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 6TH DAY OF DECEMBER, 2024.

ABIGIL MSHILA

JUDGE

In the presence of;

Court Assistants – Sanja/Julia

Thuo holding brief Nyambura for the Applicant

No appearance for the Respondents

