



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**MATRIMONIAL CAUSE NO.2 OF 2014**

**JNG.....PLAINTIFF/RESPONDENT**

**-VERSUS-**

**LWK.....DEFENDANT/APPLICANT**

**RULING**

1. This is a ruling on application dated **5<sup>th</sup> August 2020**. It seeks the following orders: -

**1) Spent**

**2) Spent**

**3) Pending hearing and determination of matrimonial cause, conservatory orders do issue to restrain the respondent by himself, his agents, employees, servants and/or any person claiming and deriving title from collecting rental income derived from LR NO. NAKURU MUNICIPALITY BLOCK xx/xxx and LR NO. NAKURU MUNICIPALITY BLOCKxx/xxx.**

**4) Spent**

**5) That pending hearing and determination of this matrimonial cause, an order do issue to direct that the rental proceeds derived from properties LR NO. NAKURU MUNICIPALITY BLOCK xx/xxx and LR NO. NAKURU MUNICIPALITY BLOCK xx/xxx be collected by reputable real estate agent to be mutually agreed upon by the parties herein and the same be deposited in a joint account registered in the names of both the defendant/Applicant and the plaintiff/Respondent herein.**

**6) That costs of the application be borne by the respondent.**

2. Grounds on the face of the application is the marriage between parties herein was dissolved vide judgment delivered on **22<sup>nd</sup> April 2014** in **Nakuru Divorce Cause No.[particulars withheld]** and upon dissolution of marriage the plaintiff/respondent instituted this matrimonial cause seeking distribution of matrimonial property

3. Further that during subsistence of the marriage between the parties, the respondent/applicant singlehandedly developed **LR No. Nakuru Municipality Block xx/xxx** and **LR No. Nakuru Municipality Block xx/xxx** but the respondent has been exclusively enjoying control and use of the rent income from the said property to the exclusion of the respondent/applicant during the pendency of this matrimonial cause; that the respondent will not suffer any loss if the application is allowed.

4. The application is supported by affidavit sworn by **LWK** the applicant on **5<sup>th</sup> August 2020**. She averred grounds raised on the face of the application and added that she took a loan from Barclays bank to develop **LR No. Nakuru Municipality Block xx/xxx** and attached documents to show that she borrowed a loan. She further averred that she contributed to the development of **LR No. Nakuru Municipality Block xx/xxx** and after separation, the plaintiff took a loan through Housing Finance which was being serviced through rental income and attached a letter from Housing Finance.

5. She further averred that rental income from **LR No. Nakuru Municipality Block xx/xxx** was being deposited in her account number 271046820 at Barclays Bank for purposes of servicing the loan but upon fully servicing the loan on or about January 2019, the plaintiff appointed agents to collect rent from **LR No. Nakuru Municipality Blockxx/xxx** and has been exclusively collecting rent from both properties.

6. The applicant averred that whereas the two properties are registered in the name of the plaintiff, it is her who took loan for their development and she has been left with no option but to move to court to protect the rental income from the said properties and that it is unfair and/or unjust for the plaintiff to exclusively enjoy the rental income.

7. She averred that the plaintiff will not suffer any loss if this application is allowed.

8. In response, the plaintiff replying affidavit dated 11<sup>th</sup> December 2020. He averred that this application is an attempt to scuttle the hearing date which was to be 7<sup>th</sup> December 2020 and state that reasons he relies on in opposing this application are set out in originating summons and affidavit filed.

9. He started by stated that the properties that the applicant seeks to collect rent from are in his name and that he bought the plots and got approval for construction.

10. He averred that he has explained how he got resources to purchase and develop the properties.

11. He averred that the applicant sold family properties listed in paragraph 7 and that the applicant squandered proceeds from the sales of the properties and now turn to what has been in his possession since they parted; further that the applicant has transferred some matrimonial property to her sister **SNK**.

12. He further averred that since 22<sup>nd</sup> September 2014, when the divorce judgment was delivered and even before the case was heard, it is informative that the applicant has not demanded for alimony neither make any financial requirements as she had enough to live on from electronic shop which she run down due to reckless lifestyle.

13. He further averred that in view of the reasons raised in the originating summons it would be fair for the court to hear the parties before disturbing the status quo; that after the applicant selling matrimonial properties in her name she now wants properties the respondent has reserved.

14. Respondent further averred that save for on instance, this matter has been adjourned at the instance of the applicant. He urged court to maintain status quo and give an early date.

#### **ANALYSIS AND DETERMINATION**

15. The issue to be determined by this court is whether rent from the two properties **LR No. Nakuru Municipality Block xx/xxx** and **LR No. Nakuru Municipality Block xx/xxx** should be collected and deposited in a joint account registered in the name of both plaintiff and defendant.

16. There is no dispute that the two properties are registered in the name of the plaintiff. The applicant however argue that she contributed to the development of the two properties but the rental income is being enjoyed by the plaintiff solely. She has argued that rent from **LR No. Nakuru Municipality Block xx/xxx** was going to her account to service a loan and after the loan was paid up the respondent instructed an agent to collect rent.

17. Each of the two parties herein has claimed entitlement to rent in view of contribution in development of the two properties. The issue of contribution can only be determining by the court after evidence being adduced to establish each party's claim.

18. In my view it would be appropriate to preserve the proceeds of rent in respect of the two properties awaiting hearing of the main suit. I see merit in the application.

#### **19. FINAL ORDERS**

**1. Rental income from the two properties LR No. Nakuru Municipality Block xx/xxx and LR No. Nakuru Municipality Block xx/xxx to be deposited in a joint interest earning account in the names of the two parties herein.**

**2. This matter to be set down for hearing on priority basis.**

**3. Costs of this application to abide by the outcome of this suit.**

**RULING DATED, SIGNED AND DELIVERED VIA ZOOM AT NAKURU THIS 6<sup>TH</sup> DAY OF MAY, 2021**

.....

**RACHEL NGETICH**

**JUDGE**

**In the presence of:**

Schola - Court Assistant

Ms. Mukira Counsel for Defendant/Applicant

