



**Njoroge v Ibrahim (Miscellaneous Application 300 of 2022)
[2023] KEMC 306 (KLR) (8 August 2023) (Ruling)**

Neutral citation: [2023] KEMC 306 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
MISCELLANEOUS APPLICATION 300 OF 2022
PA NDEGE, SPM
AUGUST 8, 2023**

BETWEEN

DORIS WANGUI NJOROGE APPLICANT

AND

RAMADHAN NDERITU IBRAHIM RESPONDENT

RULING

1. The applicant moved this Honorable court through a notice of motion dated 8th day of December 2022 seeking the following orders: -
 1. This application be certified as urgent due to reasons given in the certificate of urgency.
 2. This Honorable court be pleased to issue protection orders in favor of the applicant against the respondent restraining him from threatening, intimidating or entering into the applicant's house or in any way interfering with her quiet occupancy of the said property till the application herein is heard and decided.
 3. The honorable court to be pleased to compel the respondent to release and/or open house for her to access her personal items that she was not able to carry with her when she left his house, that is, T.V set- curved 55 inches with its box (Samsung). Cooker – ramtons/ gas cylinder 13 kg, microwave – ramtons, Leather seats – cream in color – 7 seater, 3 plastic chairs (cream, purple and blue), 1 king-sized bed with mattress, 1 5 by 6 bed, dining table (marble top, 6 seater), T.V stand, wall unit (marble top), ironing board, iron box, personal clothes and shoes, shoe rack, chandelier (2), cake mixer, blender, electric cattle, juice extractor, coffee table (marble top), fridge, padlocks (2), extensions (4), fridge guard (2), T. V (14 inch), Sony radio with 2 speakers, cups, spoons, knives, plates, cooking sticks, dish rack, chopping board, serving dishes & spoons, sufurias, sufurias covers, jiko, basins, buckets, water heater, brooms, duster, mop, hanging lines, 2 plastic stools (orange), 1 wooden stool with a Formica, curtains, sheers



(orange), earrings, wrist watch, chains, bracelets, perfumes, oils, hair spray, toilet brush, carpets (white, mix brown and black cream, fluffy brown – 7 by 9, gypsum bulbs (in a brown box), switches and cables, plastic containers (3 doted, others plain), duvet covers, suitcases, metal box, 2 black travelling bags, human hair, hangers (plastic & metallic), bed sheets, bedcovers, blankets, 4 by 6 mattress, dustbins, mop bucket (pink), decoders; 1 zuku, 1 DSTV, 1 star times all with cards, remotes, books (textbooks, magazines & true love), soap dish, dish & cable (the dish has rust), hammer, screw driver, pliers, throw pillows (8 pieces, orange in color), Panasonic decoder in video, U. V lamp machine, wall hangings (5 all flowered & 1 African print), artificial flowers & stands (3 without stands), fan, Bain Marie (1), chapati maker (1), washing machine (Samsung, Eco bubble 6kg), 1 white plastic drum, toaster, handbags.

4. The OCS kiugoina police station to enforce the orders.
5. Cost of this application above to petition the outcome.
2. With the application also came a supporting affidavit dated 8th day of December to support the notice of motion sworn by the applicant herein.
3. On 13/12/22 Hon. R Kefa, granted the following orders, that the application be certified as urgent and that the protection orders be issued in favor of the applicant against the respondent restraining him from threatening, intimidating or entering into the applicant's house or in any way interfering with her quiet occupancy of the said property till the application herein is heard and decided.
4. In his Replying affidavit sworn by the respondent dated 22/2/23, the respondent acknowledges that they cohabitated as a man and a wife with the applicant herein. The respondent denies the allegations that he has threatened to kill or harm the applicant herein. He avers that the applicant misled the court by mentioning some items that are not in his possession as listed in paragraph 5. He further avers that the applicant took advantage of the fact that the respondent is visually impaired and therefore took his house hold property and sold others as listed in paragraph 7. The respondent claims that the respondent is in custody of his original title deed Bahati/Bahati Block 1/7386. He prays that the applicant to collect her things under the supervision of the of the OCS Bahati Police Station- Kiamaina.
5. The applicant countered the allegations in the replying affidavit by filing a further affidavit dated 15th day of March 2023. The applicant denies the allegations that the respondent is visually impaired. She avers that she left the house to save her life and carried nothing from the house. The applicant denies that she took or sold any items belonging to the respondent and puts him under strict proof. The applicant denied that she has been a custodian to any documents belonging to the respondent, including the title deed he claims for. The applicant still object to be subjected to officers at Kiamaina police Station. She claims that the majority of the officers there are close friends to respondent.
6. Having gone through all the evidence adduced herein, it is clear to me that the applicant herein has been subjected to domestic violence by the respondent. The respondent herein has been physically abusing the applicant by slapping her, grabbing her neck and pinning her down to the floor. The respondent has been harassing the applicant by refusing to leave her work place and resident. The respondent has gone to the extension of threatening the applicant by use of the following words "nitakuua nikurushe kwa hii shimo na hutanipeleka mahali"
7. Under the guidance of section 19 of the *Protection against domestic violence act*, I grant the protection orders to the applicant herein directing the respondent not to;Physically abuse or threaten to abuse the applicantEngage or threaten to engage, in behavior including intimidation or harassment, which amount to psychological abuse of the applicant.Loiter, watch, near the applicant's residence or work place.



8. The applicant herein has proved to this Honorable court through the provision of receipts marked DWM1, that items therein are his belongings and that she lawfully owns them, I therefore grant the order that the respondent to open the house for the applicant to access her belonging as listed under paragraph (c) of the Notice of motion.
9. The respondent claims that the applicant left with his Properties. However, the respondent failed to prove this claim. Section 107 of the *evidence act* states that whoever desires any court to give judgement as any legal right or a liability dependent on the existence of fact which he asserts must prove that those facts exist. That when a person is bound to prove the existence of any fact it is said that burden of proof lies on that person.
10. Moreover the court of appeal in case of Mbuthia Macharia v Annoh Mutua & another (2017) eKLR discussed the burden of proof and stated that; the legal burden is discharged by way of evidence, with opposing party having a corresponding duty of adducing evidence in rebuttal. This constitutes evidential burden. Therefore, while both the legal and evidential burden initially rest upon the appellant the evidential burden shifts in the cause of trial depending on evidence adduced. As the weight of evidence given by either side during the trial varies, so will the evidential burden shift to the party who would fail without further evidence?
11. I therefore find that the respondent failed to prove that the items belong to him and that the applicant did leave with his items listed in the replying affidavit. I direct that the OCS Bahati- Kiamaina police Station who is hereby ordered to enforce the orders herein, upon payment of any fee for private use or use of police to enforce private or personal orders. Each party to bear his/her own costs thereof.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 8TH DAY OF AUGUST 2023

ALOYCE PETER NDEGE

SENIOR PRINCIPAL MAGISTRATE

Ruling delivered in the presence of;

Applicant: In person

Respondent Counsel: Kamau h/b Karanja Mbugua

Court Assistant: Janet

