

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MILIMANI**  
**FAMILY DIVISION**  
**MATRIMONIAL CAUSE NO. E042 OF 2024 (OS)**

<b>ASENATH KEERU MURUNGI</b>	.....	<b>APPLICANT</b>
	<b>VERSUS</b>	
<b>JAMES HENRY MURUNGI</b>	.....	<b>RESPONDENT</b>

**RULING**

1. Before the Court is Notice of Motion dated 22 July 2024 brought under sections 12 and 14 of the Matrimonial Property Act, 2013, Rules 20 and 21 of the Matrimonial Property Rules and Order 40 of the Civil Procedure Rules. The same seeks the following orders:
  - (i) (spent);
  - (ii) That pending the hearing and determination of this Application, this Court be pleased to declare that the Claimant is entitled to 50% of the rental income from Nairobi/ Block 99/54;
  - (iii) That pending the hearing and determination of this suit, the Court be pleased to declare that the Claimant is entitled to 50% of the rental income from Nairobi/Block 99/54;
  - (iv) That pending the hearing and determination of this Application, an injunction do issue restraining the Respondent, his agent and/or servant from transferring, disposing, alienating or otherwise dealing with the properties namely Mwimbi/Kiraro/899 and Igoji/Kiangua/1220;

- (v) That pending the hearing and determination of this suit, an injunction do issue restraining the Respondent, his agent and/or servant from transferring, disposing, alienating or otherwise dealing with the properties namely Mwimbi/Kiraro/899 and Igoji/Kiangua/1220;
  - (vi) That this Honourable Court be pleased to make such other or further orders as may be appropriate to meet the ends of justice.
2. The Application is premised on the grounds on the face thereof and supported by the Affidavit sworn by the Applicant. The gravamen of this dispute is rooted in the division of assets following the dissolution of the marriage between the parties, a union that spanned over 3 decades before its legal termination. The central question at this interlocutory stage is whether the Court can, and should, intervene to alter the current status quo regarding the collection of rental income and the preservation of assets registered in the sole name of the Respondent, pending the exhaustive forensic audit of contributions that characterizes the main trial.
  3. The factual matrix is undeniably complex, involving assets situated in Kenya and a history of financial transactions spanning across international borders, specifically involving periods of residence in Saudi Arabia, Qatar and the United States of America. The parties, both retirees of considerable professional standing – the Respondent being a retired Clinical Pharmacist and the Applicant a retired Registered Nurse – are now locked in an adversarial contest over the fruits of their lifetime of labour.
  4. The marriage between the parties was solemnized on 9th August 1989 and was dissolved by a Decree Absolute issued on 16th May 2024 in Nairobi Chief Magistrate's Court Divorce Cause No. 1707 of 2021. The Applicant asserts that during the subsistence of this marriage, the parties acquired significant movable and immovable properties through joint efforts. The Respondent, conversely, maintains that the vast majority of the assets were

acquired through his sole financial muscle, and that the Applicant's contribution was negligible or non-existent.

### **The Applicant's Case**

5. The Applicant's case is anchored on the Supporting Affidavit sworn on 22 July 2024 and Further Affidavit sworn on 16 October 2024. The Applicant paints a picture of a partnership where financial burdens were shared, albeit in different jurisdictions and through different mechanisms.
6. The primary relief sought by the Applicant is access to 50% of the rental income derived from the property known as Nairobi/Block 99/54 (hereinafter "the Runda Property"). The Applicant has annexed a Certificate of Lease which shows that this property is registered in the joint names of the Applicant and Respondent as joint proprietors.
7. The Applicant avers that despite this joint registration, the Respondent has arrogated to himself the exclusive right to collect, utilize, and enjoy the entirety of the rental income generated by this property. She relies on a Lease Agreement dated April 23, 2018, between the Respondent and a tenant, Frilo Limited, which indicates a monthly rental income of Kshs. 300,000 payable quarterly. The Applicant's plea is one of financial distress. She depones that following the breakdown of the marriage and the Respondent's alleged cruelty, she was forced to flee the matrimonial home. Initially, the Applicant rented a furnished apartment but was compelled to vacate due to rent increments. She is currently residing with relatives in Nairobi. The Applicant argues that as a retiree receiving a modest pension of approximately Kshs 235,104/=, she is entitled to usufruct the property she legally co-owns to secure independent accommodation.

8. Further, The Applicant further seeks injunctive relief to restrain the Respondent from alienating two specific properties registered in his sole name. The property known as Mwimbi/Kiraro/899 hosts the matrimonial home in Chogoria. The Applicant fears that the Respondent, having exclusive possession, may dispose of it to her detriment. She claims a beneficial interest in this property, asserting that her parents contributed Kshs. 32,000 towards its acquisition and that her father gifted the cedar trees used to construct the home.
9. With respect to the property known as Igoji/Kiangua/1220 (The Tea Farm), while conceding that this land was acquired by the Respondent prior to the marriage (1975), the Applicant claims a beneficial interest by way of improvement. She avers that during the marriage, the parties jointly funded the planting of tea bushes on this land, thereby transforming its value and character.
10. The Applicant details her contribution in her Further Affidavit. She asserts that the family's economic arrangement was one of divided responsibility. While the Respondent serviced loans in Kenya, she bore the brunt of the expenses in the United States.

### **The Respondent's Case**

11. The Respondent opposes the Application with significant vigour, filing a detailed Replying Affidavit dated 24 September 2024 and voluminous annexures. His response is structured on a complete denial of the Applicant's contribution and a challenge to the legal propriety of the orders sought.
12. The Respondent contends that the Runda Property was acquired solely through his efforts and financial resources. He goes on to provide a chronological trail of the acquisition. The Respondent argues that the

inclusion of the Applicant as a joint proprietor on the title in April 1993 was done purely out of the goodness of his heart and did not reflect any financial contribution on her part. The Respondent invokes the rebuttable presumption under section 14(b) of the Matrimonial Property Act, asserting that he will rebut it at trial.

13. The Respondent seeks to dismantle the Applicant's narrative of indirect contribution by producing massive volumes of receipts and cheques. He argues that the Applicant's financial input was minimal and that her pension of USD 2,500 is sufficient for her needs, negating any claim for maintenance disguised as rental income sharing.
14. The Respondent concedes that Mwimbi/Kiraro/899 is the matrimonial home but he states that he has no intention of selling it, thus making the injunction unnecessary. With regard to property Igoji/Kiangua/1220, he asserts that this property is not matrimonial. The Respondent claims the tea bushes were planted by his brother, Thomas Kiraithe Muraga, under a specific usufructuary arrangement while the Respondent was in the diaspora. He annexes a "Grower Registration Verification Certificate" in his brother's name (Exhibit JHM-10) to prove that the economic activity on the land was separated from the matrimonial union.

### **Analysis & Determination**

15. Before delving into the merits of the Application, the Court must address the Respondent's preliminary objection that the application is incompetent because Order 40 of the Civil Procedure Rules does not allow for distribution of assets (rental income) at an interlocutory stage.

16. The jurisdiction of this Court in matrimonial property matters is *sui generis*, derived from The Constitution and the Matrimonial Property Act. Article 45(3) of the Constitution provides:

*"Parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage."*

17. This constitutional imperative of equality is not suspended pending trial. While the final division of assets requires a trial, the preservation of the parties' dignity and means of livelihood during the pendency of litigation is a core function of the Court's equitable jurisdiction. Section 17 of the Matrimonial Property Act empowers the Court to make declarations regarding property rights. Furthermore, Section 1A and 1B of the Civil Procedure Act mandate the Court to facilitate the just and expeditious resolution of disputes.

18. The Respondent's reliance on the strictures of Order 40 is misplaced in the context of income-generating matrimonial assets. The Courts have evolved a jurisprudence that distinguishes between the alienation of the property itself and the enjoyment of the usufruct (the income). In ***J K W v E W K [2014] KEHC 5407 (KLR)***, the Court explicitly granted an order for the sharing of rental income pending suit, holding that:

*"The Applicant has therefore persuaded this court that he is entitled to receive income from the two properties on an interim basis, pending the hearing and determination of the division of matrimonial properties in dispute.... The rental income, less expenses, shall equally be shared between the Applicant and the Respondent."*

19. Similarly, in ***SNK v JMM [2024] KEHC 5559 (KLR)***, the Court ordered a respondent to deposit 50% of rental income into an account for the applicant, recognising that withholding such income where joint ownership exists constitutes an exceptional circumstance warranting a mandatory injunction.
20. Therefore, this Court holds that it has the requisite jurisdiction to order the interim sharing of rental income, particularly where the property is jointly registered, to prevent the economic oppression of one spouse by the other during the litigation process.
21. The determination of the issue of the 50% share of rental income from Nairobi/Block 99/54, rests on the interaction between the title deed and the presumption of contribution. The title deed establishes that the property is held in the name of the Applicant and Respondent as joint proprietors. This brings the property squarely under the ambit of section 14(b) of the Matrimonial Property Act, which states:
- “Where matrimonial property is acquired during marriage... (b) in the names of the spouses jointly, there shall be a rebuttable presumption that their beneficial interests in the matrimonial property are equal.”.*
22. The Respondent argues that he can rebut this presumption. He relies on the Supreme Court decision in ***JOO v MBO; Federation of Women Lawyers (FIDA Kenya) & another (Amicus Curiae) [2023] KESC 4 (KLR)***, which affirmed that equality does not mean a mandatory 50:50 split and that contribution must be proved. However, the Respondent conflates the burden of proof at trial with the status of rights at the interlocutory stage. At trial, the Respondent is at liberty to adduce evidence to displace the 50% presumption. But at the interim stage, the title deed is the superior evidence

of ownership. The *prima facie* position established by the joint title is that the Applicant owns 50% of the property. Until a court decrees otherwise after a full trial, the Applicant remains a legal owner.

23. To allow the Respondent to collect 100% of the rent based solely on his intention to rebut the presumption at trial would be to effectively strip the Title Deed of its legal efficacy *pendente lite*. It would allow the Respondent to act as the sole owner despite the register saying otherwise.
24. The Respondent has conceded that Mwimbi/Kiraro/899 is the matrimonial home. Section 12(1) of the Matrimonial Property Act provides absolute protection to the matrimonial home, prohibiting alienation without the consent of both spouses. The Respondent's assurance that he has no intention to sell is insufficient security in a contentious divorce. The Applicant is entitled to an order preserving the home as a matter of statutory right.
25. The Respondent argues that **Igoji/Kiangua/1220** is pre-marital property acquired in 1975 and, therefore, exempt. The Applicant invokes Section 9 of the Matrimonial Property Act, claiming a beneficial interest due to improvements (planting tea bushes) made during the marriage. The Respondent produced Exhibit JHM-10 (Grower Registration) to show his brother manages the tea.
26. The Applicant avers the planting was a joint project funded by family resources.
27. Whether the tea bushes were planted by the couple or the brother is a dispute of fact. However, if the land is sold, the improvements (tea bushes) go with it, extinguishing the Applicant's claim. The preservation of the property is essential to ensure that if the Applicant proves her contribution to the improvements at trial, there is property against which that

interest can be realized. Therefore, an injunction is necessary to preserve the *status quo*.

28. The Court finds that the Applicant has established a *prima facie* case with a probability of success regarding her interest in the Runda Property and the Matrimonial Home. She has also raised a triable issue regarding the Tea Farm sufficient to warrant preservation orders.

29. Accordingly, the Notice of Motion dated 22 July 2024 is allowed in the following terms:

- (i) Pending the hearing and determination of this suit, the rental income derived from the property known as Nairobi/Block 99/54 shall be shared equally between the Applicant and the Respondent on a 50:50 basis.
- (ii) The Respondent, his agents, servants, or any estate agent currently managing the said property, are hereby ordered to remit 50% of the net monthly rental income (being Kshs. 150,000/- or such other sum as constitutes half the net rent) to a bank account nominated by the Applicant. This remittance shall be made on or before the 5<sup>th</sup> day of every succeeding month, commencing from 1 December 2025.
- (iii) Pending the hearing and determination of this suit, an injunction is hereby issued restraining the Respondent, his agents, servants, employees, or anyone acting on his behalf, from selling, transferring, charging, leasing, alienating, wasting, or dealing in any manner prejudicial to the Applicant's interest in properties known as Mwimbi/Kiraro/899 and Igoji/Kiangua/1220;
- (iv) The costs of this Application shall be in the cause.

**DATED AND DELIVERED AT NAIROBI THIS 28 DAY OF NOVEMBER 2025**

**HELENE R. NAMISI  
JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

For the Applicant: Ms Ndirangu

For the Respondent: Mr. Kangatta

Court Assistant: Lucy Mwangi

Ruling