



VJC v BSW (Civil Suit 44 of 2019) [2025] KEHC 18417 (KLR) (16 December 2025) (Ruling)

Neutral citation: [2025] KEHC 18417 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CIVIL SUIT 44 OF 2019

JRA WANANDA, J

DECEMBER 16, 2025

IN THE MATTER OF THE MARRIED WOMEN’S PROPERTY ACT, SECTION 17

AND

IN THE MATTER OF ARTICLE 45(3) OF THE CONSTITUTION 2010

AND

IN THE MATTER OF SECTION 93(1) OF THE LAND REGISTRATION ACT, 2012

BETWEEN

VJC PLAINTIFF

AND

BSW DEFENDANT

RULING

1. The Plaintiff and the Defendant were a married couple but are now divorced. They married in 2003, were blessed with 3 children, and then divorced in 2019, after 16 years of marriage. The Plaintiff then moved this Court for a declaration that the Defendant, her former husband, registered as owner of the parcel of land known as Uasin Gishu/Kimumu Scheme/XXXX (hereinafter referred to as “the property”) holds the property in trust for the Plaintiff as his former wife. This was because, according to the Plaintiff, the property was acquired through joint funds and efforts of both parties during subsistence of their marriage She thus prayed for an order that the property be sub-divided equally between them.
2. After hearing the parties in a full viva voce trial, I delivered Judgment on 20/12/2024 in which I made orders as follows:
 - “i) A declaration is hereby issued that Land parcel No. Uasin Gishu/Kimumu Scheme/XXXX (suit property), including the main house constructed thereon, is not matrimonial property within the meaning of Section 7 of the



Matrimonial Property Act and is therefore not available for division between the parties.

- ii) A further declaration is however made that regarding the rental structures erected subsequently and separately on the remaining portion of the suit property, the Plaintiff did contribute, either directly or indirectly, to the construction thereof and is therefore entitled to and is awarded 50% share of such rental houses.
- iii) Consequently, within a period of thirty (30) days from the date hereof, the parties shall agree on and appoint a joint professional valuer to determine the value of the rental structures erected separately on the remaining portion of the suit property, and thereafter, the Defendant shall pay to the Plaintiff 50% of such value of the rental structures, in full and final discharge of the Plaintiff's claims over the suit property.
- iv) In the event of failure to agree on a joint valuer, either party shall be at liberty to move the Court to appoint a proposed valuer.
- v) Within a period of sixty (60) days from the date of receipt of the said 50% value of the rental houses in full, the Plaintiff shall move out of the suit property and thereby surrender, forfeit and/or cease all her claims over the property.
- vi) This being a family matter, each party shall bear his/her own costs of the suit."

3. The Plaintiff has now, through Messrs Limo R.K. & Co. Advocates, returned to Court by way of the Application dated 5/05/2025, whereof she seeks orders as follows:

- i. [.....] spent
 - ii. That the Honourable Court be pleased to order that the judgement property being Uasin Gishu/Kimumu Scheme/XXXX be advertised and sold by public auction to recover the decretal sum together with further accrued interest thereon until payment in full.
 - iii. That the Defendant be ordered to grant free and un-limited access to Real Appraisal Limited to the judgement property for purposes of inspection and valuation.
 - iv. That in the alternative the O.C.S. Ainabich Police Station be ordered to provide security to Real Appraisal Limited during the inspection and valuation of Uasin Gishu/Kimumu Scheme/XXXX, the judgement property.
 - v. That the Honourable Court do allocate a convenient date before the Deputy Registrar for purposes of settlement of the terms and conditions of sale of the judgement property.
4. In her Affidavit sworn on in support of the Application, the Plaintiff basically submitted that by the said Judgment, the Court ordered the Defendant to pay her 50% of the value of the rental houses erected on the suit property within a period of 60 days, but that the Defendant has however neglected to do so.
5. In opposition to the Application, the Defendant filed her Replying Affidavit sworn on 20/05/2025. He deponed that the Court having held that the suit property, including the main house constructed thereon, does not constitute matrimonial property, the property is no longer subject to the jurisdiction of this Court having so declared. He thus contended that the Judgment only awarded the Plaintiff 50% of the value of the rental structures developed on the remaining portion of the property, and not the



property itself, and as such, the prayer for sale of the property does not fall within the jurisdiction of this Court, for reason that it does not constitute matrimonial property. He urged further that he has lodged an appeal against the entire Judgment and the orders being sought by the Plaintiff will therefore have the effect of rendering the Appeal nugatory. He urged further that the Plaintiff has never taken any steps to actualize the Judgment as she has not reached out to the Defendant for purposes of sourcing for a valuer to determine her entitlement/value in the rental structures. In his view therefore, the Plaintiff's entitlement to the Judgment has not crystallized in the absence of a mutually agreed valuer, hence incapable of enforcement. He also contended that the valuer being imposed by the Plaintiff, namely, Real Appraisal Limited, has not been mutually agreed upon by the parties as directed by the Court in clause (iii) of the orders made in the Judgment.

6. I then gave the parties liberty to file written Submissions. The Plaintiff then filed the Submissions dated 8/07/2025. As for the Defendant however, despite extending time for his Counsel, Ms. Isiaho, to file her Submissions, I have not come across any filed by, or on his behalf either in the physical file, or in the online Judiciary Case Tracking System (CTS) portal.

Plaintiff's Submissions

7. Mr. Kibii, Counsel for the Plaintiff, in refuting the Defendant's challenge to the Court's jurisdiction, submitted that this Court having heard and determined this suit and issued orders for payment of 50% of the value of the rental houses sitting on the property, is clothed with jurisdiction to ensure compliance and implementation of the orders. He cited Section 38 and 44(1) of the *Civil Procedure Act*. He observed that the Court pronounced that even though the Plaintiff did not make any contribution to the acquisition of the property or to the construction and development of the main house erected thereon, she indeed directly or indirectly made contribution to the construction of the rental houses constructed separately on the remaining portion of the property, and is thus entitled to 50% of the value of the rental houses. He urged that it is this finding that led the Court to make the final orders it did. Counsel reiterated that despite the Judgment having been delivered on 20/09/2024, the Defendant has neither taken any step to undertake the valuation nor paid even a single penny to satisfy the decree. Regarding the alleged Appeal, Counsel observed that there is no of stay of execution, and that in any event, the Defendant only filed a Notice of Appeal and has never moved further to date. He cited Order 42, Rule 6 of the *Civil Procedure Rules* and also the case of *David Oyiare Ntungani v Matuiya Ole Naisuaku Orket* [2021] eKLR, and the case of *Sulami & another v Zalareeds Limited & 3 others* (Civil Suit 220 of 2016) (2022) KEHC 12884 (KLR) (Civ) (4 August 2022) (Ruling). On sale of the property, he cited the provisions of Order 22 Rule 57 of the *Civil Procedure Rules*, and also the case of *Data Guard Distributors Limited v Virginia Njeri Kigo & 3 others* [2019] eKLR.

Determination

8. The issue that arises in this matter is "whether an order should issue directing sale of the suit property in execution of the Judgment delivered herein".
9. Section 38 of the *Civil Procedure Act* is premised as follows:

" 38. Powers of court to enforce execution

Subject to such conditions and limitations as may be prescribed, the court may, on the application of the decree-holder, order execution of the decree—

- (a) by delivery of any property specifically decreed;
- (b) by attachment and sale, or by sale without attachment, of any property;



- (c) by attachment of debts;
 - (d) by arrest and detention in prison of any person;
 - (e) by appointing a receiver; or
 - (f) in such other manner as the nature of the relief granted may require:
10. Section 38 therefore grants the Court wide and broad powers to enforce decrees in various ways, including, ordering for delivery of property, attachment and sale of assets, attachment of debts, arrest of judgment-debtor, appointment of receivers, or by any other means necessary to ensure satisfaction of, or compliance with the judgment.
 11. The Defendant, through Ms. Isiaho, argues that the Application cannot stand because the Court no longer possesses jurisdiction over the suit property simply because it declared the property as not constituting “matrimonial property”. This argument does not hold water at all. As correctly pointed out by Mr. Kibii, this Court pronounced that even though the Plaintiff did not make any contribution to the acquisition of the suit property, or to the construction and development of the main house erected thereon, she directly or indirectly made contribution to the construction of the rental houses constructed separately on the remaining portion of the property, and is thus entitled to 50% of the value of such rental houses. How, pray, does this finding oust the Court’s jurisdiction to enforce that specific portion of the order? Regarding the alleged Appeal, no evidence of stay of execution has been presented. I accordingly reject the Defendant’s challenge over this Court’s jurisdiction as it is clearly misconstrued.
 12. Having said so however, there is a different reason why the Application cannot succeed. As will be recalled, the order of the Court was that the parties attempt to mutually agree on a valuer to carry out valuation of the rental houses for the purposes of determining the 50% share that the Defendant is to pay to the Plaintiff. The default order was that should the parties fail to agree, either of them was at liberty to move the Court to appoint a valuer. This, therefore, is the Application that I would have expected the Plaintiff to have made before this Court. Instead of following this clear roadmap laid down by the Court, the Plaintiff, without even bothering to demonstrate what steps, if any, she has taken to secure the mutual agreement on picking of a valuer, now returns asking me to order for sale of the entire property, not just the rental houses but the entire property. How can this be? The Court already declared the suit property, save for the rental houses erected thereon, as not constituting matrimonial property. How then can the Plaintiff be again asking for sale of the entire property? Perhaps the Plaintiff finds the road-map given by the Court to be slow and cumbersome. If that is so, she should have filed an appeal against the same, not disregard the road-map and opt to employ her own short-cut to suit her convenience. Unfortunately for her, as long as the Judgment has not been reviewed, overturned on appeal or set aside, its terms must be complied with. What the Plaintiff is asking this Court to do is to review its Judgment and grant orders different from those it made. This, the Court cannot do as it is functus officio to that extent. All that the Court remains with is powers to enforce the Judgment, not to tinker with it or change it.
 13. The road-map given by the Court in the Judgment rendered on 20/09/2024 is very clear and there is no reason why the Plaintiff is cleverly attempting to circumvent the same hoping to secure a Review in disguise. The terms of the Judgment do not include sale of the suit property and such recourse may only be considered as a means of enforcement if the Plaintiff demonstrates that the Defendant has frustrated all efforts to execute the Judgment. In this case, the Plaintiff has not exhibited evidence of any attempt or communication made to the Defendant proposing a Valuer. How then can she convince the Court that she has made any efforts to actualize appointment of the Valuer, or that the Defendant has refused



to co-operate, or has frustrated efforts to appoint the Valuer? In fact, strangely, it is the Defendant, not the Plaintiff, who is informing the Court that the Plaintiff had suggested appointment of Messrs Real Appraisal Limited to carry out the valuation. The Court is therefore yet to hear from the Plaintiff.

Final Orders

14. The upshot of the foregoing is that I order as follows;
- i. The Plaintiff's Notice of Motion dated 5th May 2025 is hereby dismissed with no order on costs.
 - ii. A Mention date will now be fixed when the two parties shall each present to the Court the name of one qualified and licenced Valuer that he/she proposes to be appointed by the Court to determine the value of the rental structures erected separately from the main house in the remaining portion of the property known as Uasin Gishu/Kimumu Scheme/XXXX, for purposes of actualizing the Judgment rendered herein on 24/09/2024. Such presentation to be accompanied with written evidence that the proposed valuer is willing and ready to carry out the valuation, and to also state the cost/fee thereof, and which cost/fee the parties shall then share equally. The documents to be presented shall be filed in Court by the respective parties and served upon each other at least 3 days before the date of the Mention.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 16TH DAY OF DECEMBER 2025

.....

WANANDA JOHN R. ANURO

JUDGE

Delivered in the presence of:

Mr.Kibii for the Plaintiff - Applicant

N/A for the Defendant

Court Assistant; Brian Kimathi

