



**EJMN v PKN (Matrimonial Cause E002 of 2024)
[2026] KEHC 310 (KLR) (21 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 310 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
MATRIMONIAL CAUSE E002 OF 2024
RM MWONGO, J
JANUARY 21, 2026
IN THE MATTER OF DIVISION OF MATRIMONIAL PROPERTY
AND
IN THE MATTER OF THE MARRIAGE ACT, CAP 150**

BETWEEN

EJMN APPLICANT

AND

PKN RESPONDENT

RULING

1. Through the notice of motion dated 09th February 2024, the applicant is seeking the following orders:
 1. Spent;
 2. Spent;
 3. Spent;
 4. That pending the hearing and determination of this application the respondent be ordered to be remitting a sum of Kshs.17,000/- per month to the petitioner/applicant.
2. The application is premised on grounds appearing on its face and in the supporting affidavit thereof.
3. The applicant stated that she contributed the majority of the funds towards purchase price of the land parcel number Gaturi/Githimu/77XX. That the respondent became violent and abusive towards her and threatened to kill her even after he moved out of the matrimonial home in December 2023. She stated that since then, the respondent occasionally returns to the matrimonial home for the sole purpose of disrupting her peaceful occupation of it. This happened in January 2024 when the



- respondent went to the home and locked the applicant out of the house thus denying her access to it. He then threatened to kill her. He was armed with a panga and a hammer.
4. When she later gained access to the house, she found that the respondent had locked her bedroom and had removed the locks on the door of all the other bedrooms. She reported the incident at the police station and when the respondent was summoned, he refused to cooperate with the police and dismissed the occurrence as a matrimonial issue. The applicant is apprehensive that the respondent will cause direct harm to her. She also stated that the respondent takes all the rental income for himself and refuses to give her money to buy her medicine which she depends on for her survival.
 5. She deposed that she married the respondent in 1986 under Kiambu customary law, and in 1999 they solemnised their marriage. Together, they have 3 children who are all adults. Their matrimonial home sits on land parcel number Gaturi/Githimu/77XX which is in their joint names. That this piece of land cost Kshs.250,000/= out of which she contributed Kshs.180,000/=.
 6. She stated that they have put up rental units on land parcel number Gaturi/Githimu/5XXX which she alleged fetches a rental income of Kshs.90,000/=. She stated that they also own land parcel number Ngandori/Nguviu/3276 measuring 2 acres where they have planted 600 coffee stems and 1000 tea bushes. On the same land, they had started constructing a hospital. The other property is plot number Ngandori/Kibugu/T.5 which she bought but the respondent caused it to be registered in his name jointly with his brother.
 7. She stated that together with the respondent, they took out loans to further develop themselves and to construct the hospital. They used part of the rental income to repay some of the loans. Over time, their marriage deteriorated and they separated. The respondent has become violent towards her. Now she fears for her life because the respondent has since been accessing the matrimonial home with the intention of harming her, thus the orders sought are necessary.

Replying Affidavit

8. The respondent, in his replying affidavit stated that indeed they own properties together with the applicant and they have rental income from Gaturi/Githimu/5XXX. That he was building shops for rent on that property but they are incomplete. However, he said that he does not take any of the rent because it is paid directly to the bank to repay a loan that they took to build the hospital. Regarding income from the hospital he said that there is barely anything because the applicant disrupted the business and took away some equipment thus it has not been running.
9. He denied attacking the applicant or accessing the matrimonial home. He stated that he was forced to move out of the matrimonial home when he disagreed with the applicant and she threatened his life. That it is the applicant who goes to his rented house and intimidates him. He stated that he also fears for his life and that a restraining order should also be made against the applicant. That the applicant once took all his important documents until police ordered her to return them. He opposed the application.

Further Affidavit

10. In her further affidavit, the applicant stated that there is indeed rental income which is paid directly to the bank to repay the loans but there is Kshs.34,617/= which he pockets while she is wallowing in poverty. That she is claiming Kshs.17,000/= out of this balance of the income. The applicant claimed that the shops that the respondent was building on parcel number Gaturi/Githimu/5XXX are complete and that is why the rental income is Kshs.91,500/=



Parties' Submissions (On Prayer 4)

11. The parties entered a consent on prayers 1-3 of the application, and they agreed to file written submissions on the 4th prayer.
12. In her submissions, the applicant stated that the respondent is solely controlling the rental income from Gaturi/Githimu/5XXX of which income Kshs.56,000/= goes towards loan repayments and the proceeds from the tea and coffee crops on Ngandori/Nguviu/3276. She stated that her pension is not enough to sustain her since most of it goes towards repaying a loan, and she is left with only Kshs.5,900/= every month. That on the other hand, the respondent keeps all the remaining proceeds from the rental units and the farm while his pension is also sizeable.
13. The respondent stated that the rental units are usually not fully occupied hence the rent is never at the maximum. That the rent is paid directly to the bank and sometimes the instalment of Kshs.56,000/= cannot be raised on time. He denied that the rental income is Kshs.90,000/= as alleged by the applicant. He stated that he is incurring rent every month since he cannot live in the matrimonial home. He stated that prayer 4 cannot be granted as of right, and that the court may exercise its discretion judiciously in granting such orders. He relied on Article 45(3) of the *Constitution* and the case of *MEKM v GLM* [2016] KECA 350 (KLR) and *PKM v RPM* [2017] KECA 453 (KLR).

Issues for Determination

14. From the pleadings, the issue for determination is whether prayer 4 of the application should be granted.

Analysis and Determination

15. Through prayer 4, the applicant seeks that the respondent should pay her Kshs.17,000/= every month. She is a retired nurse whose pension is tied to loan repayments. She stated that she took out the loans to develop one of their properties by building a hospital. The respondent is also a retired civil servant who stated that he is also repaying loans and he now has to pay rent for the house he moved into after leaving the matrimonial home. He denied the applicant's allegation that he is solely controlling the rental income from Gaturi/Githimu/5XXX to the sum of Kshs.91,500/=. He stated that the rental income is much less than that and sometimes it is not sufficient to repay the bank loan instalment of Kshs.56,000/=.
16. Section 77 of the *Marriage Act* provides for maintenance of a spouse as follows:

“Grounds for order of maintenance

- (1) The court may order a person to pay maintenance to a spouse or a former spouse—
 - (a) if the person has refused or neglected to provide for the spouse or former spouse as required by this *Act*;
 - (b) if the person has deserted the other spouse or former spouse, for as long as the desertion continues;
 - (c) during the course of any matrimonial proceedings;
 - (d) when granting or after granting a decree of separation or divorce;or



- (e) if, after making a decree of presumption of death, the spouse or former is found to be alive.
- (2) The court may order the payment of maintenance to a spouse or former spouse where a decree of separation, divorce or presumption of death is issued by a foreign court and the court may declare that the decree of separation, divorce or presumption of death is effective for the purposes of this section.”
17. The above provision gives the court very wide discretion in making a maintenance order. However, it does set out particular parameters to be considered in making such an order. In *LKS v DSS* [2018] KEHC 567 (KLR), the court stated as much and declined to award maintenance to a spouse who failed to substantiate her claim. That court relied on the case of *RPM v PKM* [2015] eKLR where the court considered the following issues before making a maintenance order:
- “a. Identify the economic advantages and losses to the spouses as have been contributed by the subsistence of the marriage or its breakdown;
 - b. Apportion between the parties the attendant expenses of maintaining the issues of the marriage;
 - c. Provide relief to cover the negative consequences for the spouses as may likely arise from the breakdown of the marriage;
 - d. Make sufficient provision to enable the parties to become economically self-sufficient within a reasonable duration of time.”
18. In *PKM v RPM* (*supra*), the Court of Appeal found that both spouses have an equal right to care for themselves before demanding maintenance from the other spouse in light of Article 45(3) of the *Constitution*. From the evidence adduced, the respondent claimed that he left the matrimonial home because the applicant was threatening his life. He asserted that he now incurs rent of Kshs.8,000/= but he did not prove this expense claiming that if he had produced receipts, he would compromise his security by disclosing where he lives. He produced bank statements showing that he is repaying a loan he took out for developing one of the pieces of land. These loan repayments are from rental income from another of their properties.
19. The applicant also stated that she is using her pension, which is her only source of income to repay the loan she took out to build the hospital. She stated that when the loan instalment is deducted, she is left with Kshs.5,900/= every month and she is wants Kshs.17,000/= from the respondent. She stated that the respondent is also retired but he has a comfortable income. The respondent did not rebut to this.

Disposition

20. The Court, when dealing with an application for maintenance must have sufficient information of the income and expenses of each of the parties. From the respondents Apstar Sacco statement, the respondent is shown to receive a monthly remission of Kshs.64,814.5/-. The other statement appears to be monthly loan statement or financing statement. Insufficient evidence was availed to explain the statements as no hearing was held at which the statements were interrogated.
21. On the other hand, no bank statements of the applicant were availed which would have reasonably shown her income and expenses status.



22. Further, the rental income collected from the houses and shops is disputed. The respondent admits it averages Kshs.60,000/- of which he repays a loan of Kshs.56,000/- leaving him with a monthly balance of Kshs.4,000/-.
23. There is also the unfortunate non-disclosure of income received from the applicant's hospital business which has been in operation from 2022. The hospital business appears to be a 50:50 partnership between the parties.
24. Ultimately, however, the overall economic position appears to show that the applicant has proved that she is making efforts to sustain herself, and that the respondent is capable of assisting in maintaining her. In this case, I am prepared to make an interim order for maintenance in favour of the applicant in the sum of Kshs.5,000/= which will assist with the medical costs. This takes into account that both parties are retired and living off pension mostly, and their children are all adults.
25. Accordingly, I am persuaded, and do hereby, make an order for maintenance of Kshs.5,000/- monthly to be paid by the Respondent to the Applicant on the last day of each month.
26. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 21ST DAY OF JANUARY, 2026.

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R. MWONGO

JUDGE

Delivered in the presence of:

Ms. Githinji for Applicant

Kimanzi for Respondent

Francis Munyao - Court Assistant

