



**RRK v JMN (Matrimonial Cause E010 of 2015)
[2026] KEHC 355 (KLR) (21 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 355 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
MATRIMONIAL CAUSE E010 OF 2015
RM MWONGO, J
JANUARY 21, 2026**

**IN THE MATTER OF ARTICLE 45(3) OF THE CONSTITUTION AND SECTION 7 OF
THE MATRIMONIAL PROPERTY ACT**

BETWEEN

RRK APPLICANT

AND

JMN RESPONDENT

RULING

1. The applicant has filed a notice of motion dated 21st July 2025 seeking the following orders:
 1. Spent;
 2. That there be an order to authorize the Deputy Registrar of this Honourable Court to sign the transfer forms, application for consent of the land control board forms and all the necessary documents for transfer of Gaturi/Githimu/3729 (0.22 ha), Ngandori/Kirigi/1165 (1.12 ha), Gaturi/Kihumbu/T.212 (0.05 ha) and Evurore/Nguthi/568 (3.00 ha) in favour of the Plaintiff/Applicant to give effect to the decree of this court dated on the 24th November 2017;
 3. That there be an order compelling the Defendant/Respondent to, within 14 days from the date of the order, surrender a copy of his national identity card, copy of his KRA PIN certificate and his 16 passport size photographs for purposes of giving effect to the decree of this court dated on the 24th November 2017.
 4. That there be an order directing the Registrar of Lands - Embu County to have the properties Gaturi/Githimu/3729 (0.22 ha), Ngandori/Kirigi/1165 (1.12 ha), Gaturi/Kihumbu/T.212 (0.05 ha) and Evurore/Nguthi/568 (3.00 ha) transferred in favour of the Plaintiff/Applicant



Rose Rwamba Kinyua to give effect to the decree of the court dated on the 24th November 2017 without production of the current original title deeds;

5. That the Honourable Court do make such other and further orders as it may deem fit, necessary and expedient in the interest of justice; and
 6. That cost of this Application be borne by the Defendant/Respondent.
2. The applicant was given ownership of the properties Gaturi/Githimu/3729 (0.22 ha), Ngandori/Kirigi/1165 (1.12 ha), Gaturi/Kihumbu/T.212 (0.05 ha) and Evurore/Nguthi/568 (3.00 ha) through a judgment of the court delivered on 24th November 2017. This judgment was challenged at the Court of Appeal but the appeal was struck out for being filed out of time.
 3. Since that time, the respondent, who had custody of the original title documents, has refused to hand them over and to sign the relevant transfer documents to enable transfer of the properties to her. She has now moved the court for the orders sought herein to enable her to take possession of the properties.

Supplementary Affidavit

4. In her supplementary affidavit denying encumbering any of the respondent's properties. She stated that she only encumbered the properties she was awarded by the matrimonial court. That whatever encumbrances exist on the respondent's properties were placed before their marriage ended and she had nothing to do with them. She urged the court to grant the orders and allow her to enjoy the fruits of her judgment.

Parties' Submissions on the Application

5. The application was canvassed by way of written submissions.
6. In her submissions, the applicant relied on section 98 of the *Civil Procedure Act* and the cases of Simon Ndungu Nganga & 3 others v Daniel Nganga Njoroge & 2 others [2021] KEELC 3763 (KLR), Wahome & 4 others v Mathenge [2024] KEELC 4071 (KLR), Jane Njeri Karongo & Harisson Munga Karongo (Sued as the Legal Representative of the Estate of Rongo Kiuri & another v Hannah Wanjiku Kamau (Suing as the Legal Representative of the Estate of Kamau Kiuri Karongo [2021] KECA 802 (KLR) and In re Estate of John Wandera Magonda (Deceased) [2025] KEHC 11689 (KLR). She argued that the orders are necessary in order to give effect to the order of the court, hence the application should be allowed.
7. The respondent submitted that the court should consider that the applicant has also encumbered his properties hence denying him their enjoyment. That even though the applicant denies encumbering his properties, she has not proved this denial. He urged the court to dismiss the application.

Issue for Determination

8. From the foregoing, the issue for determination is whether the application has merit.

Analysis and Determination

9. The parties herein were given properties through distribution in a matrimonial cause. The applicant alleges that after the orders were given, the respondent refused to sign the relevant document effecting transfer of the properties to her yet he is the registered proprietor. The orders sought through the application are to enable transfer of these titles to her, albeit through the court. She relied on section 98 of the *Civil Procedure Act*.



10. The respondent indicated that the applicant has equally encumbered his properties with cautions and he will only transfer the applicant's properties when she lifts the encumbrances placed on his own titles. The judgment of the court was delivered on 14th November 2017. Through it, the court distributed the matrimonial property between the parties in the manner pleaded. A decree was issued on 24th November 2017 but it has never been executed.
11. An order of the court is solemn. A party cannot choose whether or not to comply with an order of the court even if they themselves are aggrieved in other respects. Execution of a decree of the court cannot be conditional on factors that the court did not include in its findings. It is trite that courts cannot and should not make orders in vain as was the sentiment in the case of *B. v. Attorney General* [2004] 1 KLR 431 where it was held thus:

“The Court does not, and ought not to be seen to, make Orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the Constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people.”
12. Given the circumstances, it is imperative that the decree of the court be executed by the means prayed since the respondent has demonstrated his unwillingness to transfer the properties voluntarily. In any event, the respondent may move the court for orders for removal of the encumbrances placed on his properties through a separate motion.

Disposition

13. In light of the foregoing, I find that the application has merit.
14. Accordingly, I hereby issue the following orders:
 1. The Deputy Registrar of this Honourable Court is hereby authorized to sign the transfer forms, application for consent of the Land Control Board consent forms and all the necessary documents for transfer of Gaturi/Githimu/3729 (0.22 ha), Ngandori/Kirigi/1165 (1.12 ha), Gaturi/Kihumbu/T.212 (0.05 ha) and Evurore/Nguthi/568 (3.00 ha) in favour of the Plaintiff/Applicant to give effect to the decree of this court dated the 24th November 2017;
 2. Within 14 days from the date of this ruling, the Defendant/Respondent shall surrender a copy of his National Identity Card, copy of his KRA PIN certificate and 16 passport size photographs for purposes of giving effect to the decree of this court dated on the 24th November 2017;
 3. Upon receipt of the requisite documents, the Registrar of Lands - Embu County shall have the properties Gaturi/Githimu/3729 (0.22 ha), Ngandori/Kirigi/1165 (1.12 ha), Gaturi/Kihumbu/T.212 (0.05 ha) and Evurore/Nguthi/568 (3.00 ha) transferred in favour of the Plaintiff/Applicant Rose Rwamba Kinyua to give effect to the decree of the court dated the 24th November 2017 without production of the current original title deeds for that purpose;
 4. Each party to bear their own costs.
15. Orders accordingly.

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

R. MWONGO



JUDGE

Delivered in the presence of:

Wanjira holding brief for Kariuki for Plaintiff/Applicant

No Representation for Mukami for Respondent

Francis Munyao - Court Assistant

