



**MNN v JN (Matrimonial Cause E087 of 2024)
[2025] KEHC 3077 (KLR) (Family) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 3077 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MATRIMONIAL CAUSE E087 OF 2024
CJ KENDAGOR, J
FEBRUARY 26, 2025**

BETWEEN

MNN APPLICANT

AND

JN RESPONDENT

RULING

1. The Application coming for consideration in this Ruling is the Applicant’s Notice of Motion dated 4th December, 2024 seeking the following orders;
 - i. Spent;
 - ii. That this Court be pleased to grant leave to file Matrimonial Property Cause E087 of 2024 out of time and consequently the Certificate of Urgency, Notice of Motion, Originating Summons and Supporting Affidavit all dated 29th November 2024 and filed herein on 1st December 2024 be deemed properly on record;
 - iii. That the costs of this application be in the cause.
2. The Application is supported by the Applicant's Affidavit of the same date and a Further Affidavit sworn on 12th December, 2024 and was countered by the Respondent through a Replying Affidavit sworn on 11th December, 2024.
3. The background of the matter is that the Applicant and the Respondent were married and the marriage was dissolved on 24th March, 2023 in the Chief Magistrate’s Court Milimani Divorce Cause No. E185 of 2022. The decree absolute was issued on 24th April, 2023. Subsequently, the Applicant filed Originating Summons dated 29th November, 2024, that are now the subject of this application, to wit,



- that they were lodged out of time without leave of the Court, and the Applicant is now seeking to regularize the same by asking the court to admit/deem them as properly on record.
4. The parties filed their respective submissions with regard to the application. They also referenced several authorities that I have duly considered.
 5. Having carefully considered the pleadings and the submissions of the parties, I find the issues for determination to be:
 - i. Whether the Originating Summons dated 29th November, 2024 was filed within time;
 - ii. Whether the court can admit the pleadings that were filed out of time without leave of the court, and;
 - iii. Whether the prayer for leave to file pleadings out of time is justified;
 - iv. What orders the Court can make concerning the application and the pleadings herein.
 6. The *Matrimonial Property Rules, 2022*, govern all matters of practice and procedure under the *Matrimonial Property Act* (Cap. 152). These Rules outline the procedures to be adhered to, the forms to be used, and the timeframe for filing and serving documents in matrimonial property cases.
 7. Rule 5 provides that:
 1. A spouse or former spouse may apply to a court for the determination or declaration of any right or claim over matrimonial property in accordance with Rule 7—
 - a. at any time after the dissolution of the marriage by a decree of a court given in final determination of proceedings under the Marriage Act (Cap. 150);
 - b. as part of the relief sought in a matrimonial cause under Section 17 of the Marriage Act (Cap. 150), where the applicant is seeking a declaration of rights to any property that is contested between the applicant and the applicant's spouse or former spouse; or
 - c. with respect to the persons specified in rule 4(b) and (c), during the subsistence of a marriage.
 2. An application under paragraph (1)(a) shall be filed within twelve months from the date on which the decree absolute is given.
 3. Without prejudice to the generality of paragraph (ii), a court may, for good cause, extend the time for making an application under paragraph (i)(a) after hearing —
 - (a) the applicant; and
 - (b) any other person interested in the property who is likely to be affected by the order sought and who the Court considers as having a right to be heard.
 8. The Originating Summons was filed on 1st December, 2024. This is approximately 19 months from 24th April, 2023 when the decree absolute was issued. Therefore, on the first issue for determination, it is clear that the Originating Summons dated 29th November, 2024 was filed out of the 12 months period that is stipulated in Rule 5 (2) of the *Matrimonial Property Rules*.
 9. The Applicant has asked the Court to proceed to give leave and deem the Originating Summons as properly filed.



10. The Applicant has invoked Rule 18 of the *Matrimonial Property Rules* and asked the Court to find that the grant of leave under Rule 18 (2) of the *Matrimonial Property Rules* can be considered even after the matrimonial property proceedings have commenced.
11. Rule 18 states that;
 1. No party may file any pleading or other process out of time except with leave of the court on application for extension of time for that purpose, and on such terms as the court may think just.
 2. An application for leave to file pleadings or other process out of time may be made by way of notice of motion supported by affidavit, or orally at any stage in the proceedings.
12. The wording in Rule 5 (2) is mandatory. Rule 18 (1) also expressly states in mandatory terms that no party may file any pleading or other process out of time, except with the leave of the Court upon application for an extension of time for that purpose, and on such terms as the court may deem just. This Rule implies that leave must be sought before the pleadings are filed, not vice versa.
13. The Applicant’s argument in the submissions can be seen as contending that under Rule 18 (2) of the *Matrimonial Property Rules*, a party may file pleadings and then seek leave for their admission thereafter. However, this is a flawed interpretation of the procedural framework established by the rules.
14. My interpretation of sub-rule (2) is that it establishes a framework for how a party can formally approach the Court to seek leave. The provision for applications in ongoing court proceedings is intended for situations where pleadings or any other necessary processes are to be filed beyond the specific timeframes in existing court proceedings. In that instance, the proceedings are presumed to have been properly initiated within the timelines specified in the Matrimonial Property Rules.
15. The Originating Summons was filed outside of the 12-month time frame as outlined in Rule 5 (2) of the *Matrimonial Property Rules* and without the leave of the Court. The Applicant seeks a remedy for a wrong that cannot be addressed retroactively. Leave ought to have been sought before filing the matrimonial property cause. The Originating Summons Application is improperly before the Court, and I proceed to strike it out.
16. What orders can the Court make, given that the Applicant, by approaching the Court, has shown an interest in having the matrimonial property dispute determined? The applicant has provided reasons for the delay in her affidavits, citing emotional stress following the divorce, responsibilities towards the children’s well-being, and financial constraints. The reasons for the delay are plausible.
17. Rule 3 (2) of the *Matrimonial Property Rules* provides as follows;
 - “(2) The Court shall, in the exercise of its powers under the Act or the interpretation of any of its provisions, seek to give effect to the spirit and principles of the Constitution and the objective of these Rules”.
18. In exercising this Court’s discretion and in the interest of justice, I grant the Applicant 21 days from this Ruling to file fresh pleadings if desired. The order shall operate as leave granted under Rule 18 of the Matrimonial Property Rules, and the leave shall expire if the applicant fails to lodge the claim within the stipulated timelines.
19. The costs of the application and the suit are awarded to the Respondent and assessed at Kshs.45,000/=, payable within 45 days.



Disposition

20. The orders made with regard to the Application dated 4th December, 2024 are as follows;
- i. The Originating Summons dated 29th November, 2024 is struck out.
 - ii. The Applicant is granted leave to file a new claim within 21 days, failure of which the leave so granted shall lapse.
 - iii. The Respondent is awarded the costs of the application and the suit, which are assessed at Ksh. 45,000/-, to be paid by the Applicant within 45 days.
21. It is so ordered.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS
ONLINE PLATFORM ON THIS 26TH DAY OF FEBRUARY, 2025.**

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

