



DOA v EOM (Civil Suit 17 of 2018) [2025] KEHC 4267 (KLR) (Family) (25 March 2025) (Ruling)

Neutral citation: [2025] KEHC 4267 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL SUIT 17 OF 2018
CJ KENDAGOR, J
MARCH 25, 2025**

BETWEEN

DOA APPLICANT

AND

EOM RESPONDENT

RULING

1. The Applicant herein, filed the Originating Summons dated 20th March, 2018 against the Respondent seeking the following orders;
 1. That an order do issue declaring property namely Land Parcel Number 70290/X2(IR.105XX3), a four bedroomed apartment No. 1X Block BX, L.R. 209/11XX6 namely Parkview Apartments is matrimonial property.
 2. That an order do issue declaring that the Applicant is entitled to 70 % or such other higher proportion of the matrimonial property namely Land Parcel Number 70290/X2 (IR 10XX03), a four bed roomed apartment No. 1X Block BX, L.R.209/11XX6 namely Parkview Apartments (suit property) which is registered in both the names of the Applicant and the Respondent but is in the physical possession of the Respondent.
 3. That the joint ownership of the matrimonial property namely 70290/X2 (IR 10XX03), a four bed roomed apartment No. 1X Block BX, L.R.209/11XX6 namely Parkview Apartments be severed and divided at the ratio of 70:30 in favour of the Applicant.
 4. That this Honourable Court do issue an order directed at the Respondent to reinstate the Applicant and her children in the matrimonial home (suit property) pending the hearing and determination of this suit.



5. That this Honourable Court be pleased to order that the Respondent do provide statements of accounts of the income in terms of rent that he has collected from the matrimonial property since December 2016 to date and the said income aforesaid be shared equally between the Applicant and the Respondent or as the court may order.
6. That the costs of the summons be provide for.
2. On 16th July, 2024, the parties recorded a consent that Parkview Apartment L.R No. 209/11XX6, Block No. 11 be divided between the Applicant and the Respondent in the ratio of 43:57 respectively.
3. The Court was left to determine the issue of rental income collected from December, 2016 up to date. The Court was also to determine the maintenance expenses of the property.
4. Parties agreed that the matter be canvassed by filing affidavits and submissions.
5. The Respondent filed an affidavit of utilization of rental proceeds dated 14th August, 2024. He averred that on 10th December, 2016, he let out the house to a tenant for one year at Kshs.65,000/= per month. The tenant has been in occupation since then. He argued that he pays Kshs.4,000/= as a service charge per month, which translates to Kshs.412,000/= per year. He stated that before the tenant moved in in 2016, he did a major renovation which costed him Kshs.424,369/=. In 2021, he incurred another Kshs.420,000/= for repair. He also pays Kenya Revenue Authority Kshs.4,000/= per month which translates to Kshs.364,000 per year. That he used Kshs.4,262,425/- to pay school fees for their three children since he has not been in employment since 2015.
6. The Applicant filed an affidavit of response dated 17th September, 2024. She averred that the house is registered jointly in her name and that of the Respondent. The Respondent rented out the house while she was in the USA with her children. The stated that she was forced to look for an alternative house to rent with her children. She also contends that the Respondent increased rent from the year 2021 to Kshs.70,000/=. She averred that the management company does structural repairs, not individual owners.
7. The Applicant also averred that the receipts produced by the Respondent are for a house he was constructing in Awendo and that the income tax attached is for the Respondent's bar in Narok and not the property in issue.
8. She stated that the Respondent was in employment from 2014 to 2022. According to the Applicant, the Respondent failed to provide medical cover for their children and defaulted in payment of school fees, and she had to chip in at some point. She faulted the Respondent for producing a receipt of payment of school fees to a child named AAO, who is not her child with the Respondent; She argued that the Respondent owes her Kshs.2,278,140/= being rental income from 2014 - 2024 less service charge.
9. The Respondent filed a supplementary affidavit dated 25th September, 2024. He denied the allegation that he had increased rent to Kshs.70,000/= per month. He averred that his registered address for KRA is Narok for the property in issue and stated that the bar referred to by the Applicant owns no rental property and he does not pay rent for the same. He also stated that the child referred to by the Applicant is his child and it's his responsibility to provide for her. He argued that all the expenses before the court were for the improvement of the suit property, paying income tax, school fees for his children, and a monthly payment to the management of South C Management Ltd. He argued that the Applicant's demand for Kshs.2,278,140/= is unjustifiable, unsupported and lacks legal basis. He asked the Court not to allow the same.



10. The Applicant filed written submissions dated 20th November, 2024, whereas the Respondent's are dated 17th October, 2024.

Applicant's Submissions

11. The Applicant submits that the Respondent has not placed any material before this Court to show that the tenant pays Ksh.65,000/= as rent when the current market rate for properties in that area is Kshs.70,000/=. She argued that the service charge from 2017 to 2024 is Kshs.364,000/= and not Kshs.412,000/= as stated by the Respondent; that the external repairs (roof) referred to by the Respondent is the management company's responsibility. That the receipt of Kshs.412,000/= does not reflect the works done on that apartment or payment having been made. A purchase made from a hardware in 2016 of Kshs.845,329/= was made when she was living with the Respondent; there was actually no repair going on. She further submitted that the income tax of the property in issue has not been produced. What the Respondent produced is for a property where rent was Kshs.40,000/=. She argued that maintenance expenses, which include school fees, should not be deducted from the rental income. In any case, she has also stayed with the children and incurred expenses that no one has compensated her. She further submitted that there were no actual repairs in 2016 and the amount Kshs.845,329/= should not be allowed.
12. Relying on the provision of Section 10 (3) of the Matrimonial Act, she submitted that expenses incurred by parties in a marriage should be shared equally. On her part, she argued that she paid rent, school fees, food, clothing, and medical insurance, and therefore, she is entitled to claim from the Respondent. According to her, service charges should not be deducted from the rent paid. She argued that she is entitled to Kshs.2,386,930/= plus Kshs.2,066,820/= for the rent she paid.

Respondent's Submissions

13. The Respondent submitted that although there was a clause for rent increase by 5% from 2018, the same has never been effected. The Respondent further submitted that the Applicant has not adduced any evidence that would negate the Respondent's obligation to cater for the repairs in as far as she argues that the Respondent did not carry out any repairs. He asserted that he paid school fees from the rent income and that since both parties contributed to the welfare of the children from their incomes, he argued that it is equitable that these costs reduce the gross rental income before distribution.
14. The Respondent further submits that the residual amount after deduction of the above expenses as of July, 2024 is calculated as 5,915,000 — 5,883,794 = 31,206. Relying on Section 10 (3) of the *Matrimonial Property Act* and the decision of *RMW v WBW* [2019] eKLR, the Respondent submitted that liabilities incurred during the subsistence of the marriage should be shared equally where it's beneficial to the marriage. In this case, he argued that the Applicant demanding to be refunded rent she has paid since 2017 is unmerited and unjustified, and the same should be struck out.

Analysis and determination

15. By the consent recorded in this matter, the parties already settled the issue that Parkview Apartment South C L.R 209/11XX6 House No. XX Block BX is matrimonial property. The Respondent has maintained control of the house. The property was leased out following their separation, and they both claim rights to the rental income that was collected and continues to be collected by the Respondent.
16. Both parties have the right to receive their share of the rental income collected, distributed in accordance with the specific contributions each spouse has made to the property in question. This distribution will follow the previously agreed-upon ratio of 43% for one spouse and 57% for the other.



17. The parties disagree about the calculations of the rent collected, maintenance costs, taxes due, service charges, and respective expenses accrued by each party for their sustenance and that of their children.
18. The issues for determination are as follows;
 - i. What is the total rent received;
 - ii. Whether there are service charge fees that should be deducted from the amounts collected;
 - iii. Whether there are maintenance costs that should be deducted from the amounts collected;
 - iv. What is the income tax payment relating to the property and was it paid;
 - v. Whether school fees expenses should be paid from the rent collected;
 - vi. Whether the applicant's claim for rent paid is justified.

What is the total rent received;

19. The Respondent has submitted a lease agreement dated 9th December, 2016, which clearly indicates that the property in question was rented out for a monthly sum of Kshs.65,000/=. In contrast, the Applicant asserts that the rental rate was subsequently increased, claiming that the current monthly rent should be Ksh.70,000/=. However, the Applicant has not provided any substantial evidence or documentation to corroborate this assertion regarding the alleged increase. After careful consideration of the information presented, the Court finds it appropriate to uphold the original rental income amount of Ksh.65,000/= per month, as outlined in the existing lease agreement with the period under review commencing in December, 2016.

Whether there are service charge fees that should be deducted from the amounts collected;

20. The lease agreement specifies that the lessor is responsible for paying the service charge associated with the property. Based on the documentation provided, the service charge has been determined to be Kshs.4,000/= per month, no opposing evidence was presented that suggests otherwise. After reviewing the available information, I accept this service charge at the stated amount of Kshs.4,000/= per month. Consequently, this amount will be deducted from the total rent collected for the duration.

Whether there are maintenance costs that should be deducted from the amounts collected;

21. From the pleadings in the file, I gathered that the parties were in joint occupancy of the house up to November, 2016, when the Applicant stated that she travelled to the USA on 17th November, 2016. There is also an indication that a rural home was under construction around the same period. The Respondent's claim that no renovation work was taking place in November before their travels is credible.
22. In addition, there is a transportation receipt dated 8th November, 2016, from Trans Line Classic, which serves as evidence that building materials were transported out of Nairobi. This date predates the time when the Applicant took control of the property, raising questions about the connection of these materials to the property itself. It is, therefore, reasonable to suggest that not all of these materials can be directly linked to the property prior to its lease period.
23. Upon examining the lease, I also noted that the clause stating the tenant would be responsible for all minor repairs and maintenance such as taps leak, lights that were not working on the property, along with the clause that the respondent, as the landlord, was responsible for painting to keep it in good condition as at the commencement of the lease. The receipts I found for the painting is the



one dated 25th November, 2016 for Kshs.2,300/= and the second one dated 6th December, 2016 for Kshs.60,000/=. This amount of Kshs.62,300/- is the definitive amount that has been satisfactorily established through the Court's examination of the evidence regarding the maintenance costs incurred prior to the lease agreement.

24. Post the lease agreement, the renovation costs for interiors that were to be done by the landlord include repairs for water tanks, hot water cylinders, and roof leaks. Any defects in the main electrical system, water pipes, and main drains were also the landlord's responsibility as exteriors. The landlord was to carry out any necessary repairs for structural issues unless caused by the tenant's negligence. In that case, the tenant would be responsible for repairs and could claim reimbursement if paid, provided it wasn't due to his negligence. There is no evidence for such repairs, except for the cost of Kshs.420,000/= paid on 30th October, 2021 by the Respondent, which the Court accepts, considering further evidence of repeated calls to the management company for repairs that were not addressed during the family's tenancy.
25. The other claims for the repairs and maintenance claims are rejected.

What is the income tax payment relating to the property and was it paid;

26. The Respondent contends that he paid Kshs.4,000/= as income tax for the rent received. He has attached documentation from KRA which indicates an address that the Applicant contends that it is not for the property in issue. The address mentioned is provided to KRA, and it does not necessarily indicate that it is the property's address; rather, it serves as an address of service.
27. Tax is a legal obligation, and the tax on rental income has been applicable since 2016. The determination of whether the parties have paid their taxes and the amounts owed falls under the jurisdiction of the Kenya Revenue Authority (KRA). I cannot examine this tax matter further than what has been presented in the affidavits and annexures. As the parties address their division of the property, it will be up to both of them to ensure they are tax-compliant, as the property is registered in both their names. Any additional tax claims may be addressed by the parties with KRA outside of this current matter.
28. In the absence of any contrary evidence, and to determine the issue left to the Court regarding the rental income for the property from December 2016 to date, I adopt the tax paid at Kshs.4,000/= per month as the amount to be deducted from the rental income.

Whether school fees expenses should be paid from the rent collected and Whether the applicant's claim for rent paid is justified;

29. The Respondent has claimed that he spent part of the rental income- indeed, most of it- to pay school fees for their children. On the other hand, the Applicant has stated that she incurred costs for renting a house, as she alleges that the Respondent illegally evicted her from the matrimonial home. Both claims focus on the financial burdens that each party has faced.
30. On the issues, I draw the findings from the decision by the Children Court in the Case 132 of 2017. The Children Court directed that the Respondent cover all educational expenses for the minors until they complete tertiary education, as well as medical and grooming expenses, and additionally remit Kshs.4,500/= for household expenses. The Respondent was instructed to provide shelter and utilities, cover the shortfall of food expenses when the children are out of school and in her care, and pay half of the household expenses. Clothing expenses were to be shared. From this decision, it is evident what responsibilities each party is expected to fulfil. Deducting school fees from the rental income, even without addressing the issue raised by the Applicant that the funds were used to pay for other children



besides their own, would be unfair to the Applicant. The Applicant has stated that she continued to meet her obligations without benefiting from the rental income. The same reasoning applies to the Applicant's claim regarding the rent she incurred. Therefore, both the Respondent's claim to deduct school fees from the rental income and the Applicant's claim regarding her incurred rent are unjustified, and both fail.

Disposition

31. The rental income generated from the matrimonial property, established at Kshs.65,000/= per month since December, 2016, will be shared according to each party's contributions as outlined in the consent for division at a ratio of 43:57 in favour of the Respondent, less the following deductions: a monthly service charge of Kshs.4,000/=, a monthly tax of Kshs.4,000/=, and repairs and maintenance costs of Kshs.482,300/=.
32. Each party shall bear their own costs of the matter.
33. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 25TH DAY OF MARCH, 2025.

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

Ms Kilonzo Advocate for the Applicant

Ms. Mwaura Advocate holding brief for Advocate Kingori for Respondent

