



**MMK v JMN (Originating Summons 3 of 2018)  
[2025] KEHC 9179 (KLR) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9179 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
ORIGINATING SUMMONS 3 OF 2018**

**EN MAINA, J**

**JUNE 26, 2025**

**BETWEEN**

**MMK ..... PLAINTIFF**

**AND**

**JMN ..... DEFENDANT**

**RULING**

1. By the Notice of Motion dated 20<sup>th</sup> May 2024 the Plaintiff/Applicant seeks orders as follows:-

- “(a) That this application is certified urgent and service be dispensed with in the first instance.
- b. That pending the hearing and determination of this application interpartes this court to issue an order by way of injunction barring the Defendant from any further continued collection or rent of the Eight (8) Rental Flats constructed in the matrimonial property located in Plot Number XX in Athi River.
- c. That this court to issue an order of eviction against the Defendant herein to remove the Defendant from the matrimonial home herein located in Plot Number XX Athi River to allow for a valuation and renting out of the said matrimonial home at the current market rate.
- d. That this court do issue an order directing the plaintiff herein to collect rent from the Eight (8) Rental Flats constructed in the matrimonial property located in Plot Number XX in Athi River until such rent covers for the Plaintiff’s share or rent for the period between 9<sup>th</sup> October 2018 to date.
- e. That this court do issue any other order it deems fit in the interest of justice.



f. That the cost of this application be in the cause.”

2. The application is supported by the affidavit of MM, the Applicant, sworn on 20<sup>th</sup> May 2024 and is opposed vide the replying affidavit of the Respondent sworn on 5<sup>th</sup> June 2024.
3. The proceedings arise from a matrimonial property dispute. The background of the application is that on 9<sup>th</sup> October 2018 this court, Kemei J, delivered a ruling by which he ordered the Respondent to deposit into court all proceeds of the eight (8) rental flats constructed in Plot No. 5 Athi River, with effect from 5<sup>th</sup> September 2018 and further ordered the Respondent to furnish the court with a detailed account of all the rent received from the said eight rental flats from May 2017 until 5<sup>th</sup> September 2018. The Respondent did not comply with the order.
4. Thereafter, Muigai, J heard the dispute and on 2<sup>nd</sup> March 2023, delivered a judgment in which she declared the property a matrimonial property and made an order that the same be divided equally between the parties four apartments each, with an option of valuation and buy-out at current market rates by one party or the other. In the meantime each party was to occupy any of the four flats and/or rent them out.
5. According to the Plaintiff/Applicant, the Defendant/Respondent has despite being served with the decree of this court, continued to disobey the orders of the court and has continued to occupy the entire property to her detriment hence this application.
6. On his part the Respondent contends that he filed a Notice to Appeal against the judgment of this court and has been waiting for typed proceedings. He also contends that he filed an application for stay of execution of the decree arising from the judgment pending appeal and was awaiting for the ruling to be delivered. He further contends that he resides in one of the four flats and having him evicted would be a complete deviation of the terms of the judgment of the court. It is also his case that the allegations of non-compliance have not been proved and that mere speculation is not sufficient. He also asserts that the application as filed is one for review disguised as an application for execution of the judgment. Through his learned Advocate, he submits that the orders for review sought are not merited.
7. I have considered the application, the affidavits, the rival submissions, the cases cited, the court record and the law.
8. By the judgment of Muigai J, the property Athi River Plot XX was to be shared equally between the Applicant and the Respondent and as stated, earlier on, Kemei J had made an order that the rental income accruing from that property was to be shared equally between the parties, an order which Muigai J confirmed in the judgment.
9. It is also instructive that contrary to the Respondent’s allegation that his application dated 8<sup>th</sup> May 2023 for stay of execution pending appeal, has never been determined, the same was canvassed and the ruling delivered on 27<sup>th</sup> February 2025 in the presence of his Counsel, one Mr. Chacha who had been instructed by Ms Kafafa Advocate. Also, other than filing the Notice of Appeal, there is no indication whatsoever that he has ever made a request for the typed proceedings of this case. Clearly, therefore the Respondent is not a truthful person. He has been enjoying the matrimonial property to the prejudice of the Applicant despite the orders and decree of this court.
10. The application dated 20<sup>th</sup> May 2024 is merited. The same is not seeking a review of the decree as alleged but merely to implement the orders and decree of the court and there are no orders staying the judgment or the orders of Kemei J. In the premises the application is allowed save that the Respondent shall and is hereby allowed to continue occupying one of his share of four (4) flats. He shall however vacate the four (4) flats due to the Applicant forthwith and should he refuse and/or neglect to pay



to the applicant her share of the rental income accruing from the property with effect from the date of Kemei J's order, to wit 9<sup>th</sup> October 2018, to date, then an order shall issue for his eviction from his remaining three apartments and the Applicant shall be at liberty to rent out the same and to collect the rent therefrom so as to recover her share of the rental income accruing for the period 9<sup>th</sup> October 2018 to date.

11. The costs of the application shall be borne by the Respondent

Orders accordingly.

**RULING SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 26<sup>TH</sup> DAY OF JUNE, 2025.**

**E. N. MAINA**

**JUDGE**

In the presence of:

Mr. Webale for Plaintiff/Applicant

Ms Njeri for Kafafa for Defendant/Respondent

Geoffrey - Court Assistant

