



**POM v MNK alias MNP (Civil Suit 6 of 2012)
[2024] KEHC 2015 (KLR) (Family) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 2015 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL SUIT 6 OF 2012
HK CHEMITEI, J
FEBRUARY 29, 2024**

BETWEEN

POM APPLICANT

AND

MNK ALIAS MNP RESPONDENT

RULING

1. In his Notice of Motion dated 26th June 2023 the applicant prays for the following orders:
 - (a) That with effect from the month of July 2023 the applicant be allowed unfettered authority to collect rent from the following specified units out of 34 units being on plot no. 29 within LR No Dagoretti/Riruta/168;
 - (i) 3 one bed roomed units out of 11 such units.
 - (ii) 3 two bed roomed units out of 10 such units.
 - (iii) 5 shops out of 17 such units

oras this court may deem fit to allocate, pending the full implementation of the judgement of the Supreme Court given in Petition No 9 of 2021 as sought herein and or demonstrated in the decree already on record.
 - (b) That an order do issue compelling the respondent to forthwith render before this court the accurate accounts with respect to the rental income collected from the use of both the commercial and residential units being on the suit plot herein namely plot number 29 within LRDagoretti /Riruta/168 since 27th September 2011 until end of June 2023 or such other end period as this court may determine.



- (c) That once the total amount of the rental income collected by the respondent since September 2011 until end of June 2023 is ascertained an order do issue that the defendant remits 30% thereof to the plaintiff within thirty days of such ascertainment.
 - (d) That the applicant be forthwith allowed by the respondent unfettered access to the suit premises namely plot number 29 within LR No Dagoretti/Riruta/168 with the necessary professionals such as surveyors, physical planners, Valuers etc. to undertake necessary works to enable the applicant in preparation of a professional road map for the full implementation of the Supreme Court judgement issued on 27th January 2023 so that the ratio of 70/30 is physically determined on the ground and if necessary submit the same in court.
 - (e) That the government surveyor in charge of the area within which the plot is situated be ordered by this court at the expense of the parties herein to undertake the exercise of physically implementing the Supreme Court judgement on the ground and file his /her report in court within ninety (90) days for adoption with or without amendments.
 - (f) That the police officer in charge of Muthangari police station under whose immediate police jurisdiction the suit property lies do enforce any orders made herein and or do provide security for the peaceful implementation of the same.
 - (g) Costs be provided for.
2. The application is based on the grounds on the face of it and the sworn affidavit of the applicant dated even date.
 3. At the time of writing this ruling there was no response from the Respondent despite her counsel being present when the date was issued.
 4. The issues herein are not difficult to appreciate. The applicant and the respondent lodged a Divorce Cause which was allowed. Subsequently they filed this suit which went all the way to the Supreme Court of Kenya vide Petition Number 9 of 2021.
 5. The decision of the Supreme Court was to the effect that the applicant was entitled to 30% of the share in the property known as Dagoretti/Riruta/168 and that the Respondent was entitled to 70%. The apex court declared that there was no marriage between the two parties.
 6. The effect of the said Supreme Court's judgement meant that it was final as regards any litigation between them and all that was left was for the implementation of the same.
 7. I have perused at the supporting affidavit and the long averments by the applicant. The existence of the Succession Cause No 1161 of 1990 dealing with the suit property essentially has no bearing to this matter to the extent that it cannot alter the various courts decisions and more importantly that of the Supreme Court herein. The two can still argue their rights in the succession cause jointly as they have interest in the suit property just like the other objectors in that matter. Whatever the outcome will not affect the ratio as directed by the Supreme court.
 8. At the same time I do not think that what the Applicant is asking is out of his 30% right in the suit property. He should be allowed to enjoy the same. Since it is a developed property and as indicated another portion is undeveloped it is necessary to engage professionals to demarcate the two portions in the best way possible.
 9. The presence of the land planners, surveyors and Valuers are critical. They will enable the effective execution of the court's judgement. In any case the parties can forestall this by entering into a formal



agreement. Needless to state that the respondent has nothing to lose or be prejudiced in any way as she will be now in a position to enjoy her 70% portion as well.

10. As regards the rent income which accrued from the premises it is true that the Applicant is entitled to 30% thereof. It appears that from the day he was kicked out of the premises in 2011 he has never benefited at all. There is no evidence to that effect. There is therefore no doubt that the respondent has all along enjoyed the rent collected from the premises ever since.
11. The applicant content that from September 2011 the total rental income was Kshs 258,100 which later increased Kshs 27,7100. This ought in the absence of any scientific prove to be analysed by a professional valuer or estate agent so as to give an accurate figure. Once the figures are ascertained the applicant shall be entitled to 30% thereof from September 2011.
12. Needless to state that the Respondent ought by now to have released 30% of the monthly rent to the applicant from the date of the judgement by the Supreme court.
13. I think I have stated much to indicate that the application is merited and it is allowed as follow:
 - (a) That with effect from the date herein the applicant is hereby allowed unfettered access and to collect rent in the premises Number 29 situate at LR NoDagoretti/Riruta/168 as prayed under prayer (a) above.
 - (b) The Respondent do within 30 days from the date herein render accounts as prayed for under prayer (b) above and alternatively and without prejudice to this order and at their own costs a valuer or estate agent either agreed upon or each party to appoint, carry out the rent so far collected by the respondent from September 2011 to date and the 30% thereof be paid to the applicant by the respondent.
 - (c) In execution of the Supreme Court's judgement professionals be appointed as prayed for under prayers (c) and (d) above and their costs shall be met in the ratio of 70:30% respectively by the parties.
 - (d) Alternatively and without prejudice to (c) above either of the parties can meet the bill for the said professionals and demand the same as a debt from the other party.
 - (e) The report and findings of the parties under prayer (c) above shall be filed in this court within 90 days from the date herein.
 - (f) The officer in charge of Muthangari police station or any station within the jurisdiction of the premises shall ensure compliance of the above orders.
 - (g) Costs shall be in the cause.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 29TH DAY OF FEBRUARY 2024.

H K CHEMITEI

JUDGE

