



**Muthama v Muthama (Civil Case 51 of 2016)  
[2024] KEHC 11698 (KLR) (Family) (14 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 11698 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
CIVIL CASE 51 OF 2016  
SN RIECHI, J  
AUGUST 14, 2024**

**BETWEEN**

**VERONICA NJUGUNA MUTHAMA ..... APPLICANT**

**AND**

**JAMES NJUGUNA MUTHAMA ..... RESPONDENT**

**RULING**

1. This ruling is in respect of an application dated 14th September 2022 filed by the applicant Veronica Njuguna Muthama in which she is seeking orders;
  1. Spent
  2. Spent
  3. That pending the hearing and determination of this application, the Respondent and/or his servants or agents be restrained from removing any household items from the matrimonial home situate at Kahawa LR. No. 12149/38.
  4. That pending the hearing and determination of this suit, the Respondent and/or his servants or agents be restrained from evicting and/or excluding the Applicant and/or in any way interfering with the Applicant's peaceful occupation of the matrimonial home situate at Kahawa LR. No. 12149/38.
  5. That pending the hearing and determination of this suit, the Respondent and/or his servants or agents be restrained from removing any household items from the matrimonial home situate at Kahawa LR. No. 12149/38.



6. That the Officer Commanding Kahawa Wendani Police Station be directed to assist with implementation or enforcement of any orders the court may issue.
2. The application is premised on the grounds on face of it and the supporting affidavit of the applicant sworn on even date. The applicant also filed a further affidavit dated 29<sup>th</sup> November 2022. The respondent James Njuguna Muthama opposed the application and filed a replying affidavit dated 3<sup>rd</sup> October 2022.
3. By consent of parties this application was canvassed by way of written submissions. The applicant filed written submissions dated 2nd February 2023 and the respondent filed written submissions dated 13th January 2023.
4. The applicant's case briefly is that the parties herein are divorced, the Decree Nisi having been pronounced on 20<sup>th</sup> August 2021. She referred to annexed and marked as Exhibit 1 a copy of the Decree Nisi. The applicant averred that she has had exclusive occupation of the matrimonial home situate on Kahawa LR 12149/38 after the Respondent left the home in 2015 and started cohabiting with another woman. It is applicant's case that she recently travelled to the US and left a caretaker behind, one Austin to look after the matrimonial home pending her return which unfortunately was delayed by the COVID 19 pandemic.
5. The applicant stated that on 12th August 2022 she was informed by the caretaker, that the Respondent, in the company of several men, broke into the matrimonial home and carried away several household goods including her personal as well as the children's items and a water tank. That the incident was reported at the Kahawa Wendani Police Post which recorded as OB No. 07/17/08/2022 as evidenced by a copy of the OB.
6. The applicant averred that she is now fearful that the Respondent will return to the home and take away more household items unless the Honourable Court intervenes. The applicant averred that there is imminent risk of the Respondent renting the said house to a 3<sup>rd</sup> party or selling the same without her consent and/or knowledge as he has previously done with one of my properties Rongai Plot No. 241 that was registered in her name but the Respondent fraudulently sold it in 2011. The applicant averred that she is extremely apprehensive that the Respondent's outrageous actions could lead to dispossession of the said property yet she has an equal claim to it. That it is therefore imperative that the Court intervenes by granting the prayers sought.
7. The respondent's case is that plot No. XXXX Kahawa (suit property) is among the several properties the parties acquired at time of their marriage.
8. The respondent averred that in respect to matrimonial property LR. No. XXXX Kahawa, the Applicant vacated the premises in the year 2012 leaving him behind with Mutinda the houseboy and Dennis his son who had just joined USIU as a 1<sup>st</sup> year student. The respondent stated that the Applicant only came back in 2020, dumped the households and ran to America after realizing she was being sought by police from Kajiado in relation to illegal transfer of Plot No. XXXX Rongai. He stated that nobody was arrested in LR No. XXXX Kahawa since no crime was committed. He denied to have vandalized the subject property as alleged by the applicant.
9. The respondent stated that the Applicant has disposed of 5 prime properties without his consent and forged one LR. No. 723 Rongai whose case No. ELC 754 of 2017 is pending in court because of her disappearance. The respondent stated that the Applicant is misusing the court and does not obey court orders. The respondent stated that the applicant does not deserve any of the Court's favour since who comes to court of equity must come with clean hands.



10. The respondent averred that the two tanks referred to in applicant's affidavit belongs to him and were removed from plot XXXX under the supervision rendering the house inhabitable. The respondent stated that the applicant is a character with high appetite for cash, disrespect for the family's children's future and cannot be entrusted to preserve any property.
11. The applicant filed submissions through Ms. Thongori who submitted on whether applicant has satisfied legal grounds for grant of temporary injunctions. She submitted that applicant has satisfied the legal threshold to warrant granting of temporary injunction. Counsel submitted that the applicant has proved a prima facie and she has provided evidence as regards her rightful claim of the matrimonial home Kahawa XXXX.
12. Ms. Thongori submitted that the suit property forms part of the matrimonial properties which court has been invited to divide in the suit filed by the respondent. It was submitted that the applicant ought to given a chance to show the court that she is entitled to a share in the suit property. She submitted that this will not be realized if the respondent proceeds to interfere with the said property at this stage unless this court intervenes.
13. Mr.Koceyo for the respondent submitted applicant is not entitled to the prays sought and that the respondent bought the property and build a house using KCB Loan hence he is likely to suffer irreparable loss if the applicant is left to sell the suit property. The respondent submitted that no irreparable loss shall be experienced by the applicant since she is not in occupation of the suit property and currently resides in the US.
14. From the application, rival affidavits and the submission the main issue for determination is whether this court should grant injunctive orders as sought in the application.
15. This being an application for interlocutory injunction, the law is settled that an Applicant must demonstrate the following as laid down in *Giella v Cassman Brown* cited above:
  - (i) that he has a prima facie case with probability of success;
  - (ii) that he will suffer irreparable loss that cannot be adequately compensated by damages: or
  - (iii) that the balance of convenience is in his favour.
16. It is the Applicant's duty to demonstrate that she meets the test set in the case above. As to what amount to a prima facie case, the Court of Appeal, in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] KLR 123 furnished the following helpful definition:
17. A prima facie case in a civil application includes but not confined to a genuine and arguable case. It is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter."
18. In determining this matter, I need to remind the parties that what is under determination here is not subdivision of matrimonial property. What is before me is a Notice of Motion to determine if the injunctive orders sought therein can issue. As far as I am aware, given the evidence before me, the marriage between the Applicant and the Respondent has been dissolved. What is pending before court is suit filed by respondent on division of matrimonial property that is yet to be heard and determined. To my mind therefore, the issue for determination is whether the Applicant has satisfied the court that she deserves the orders she is seeking.



- 19. The applicant in her affidavit and submissions confirms that she is now living in America. She is not living in the house at Kahawa. She confirms that she only has a caretaker to the house. She admits that the respondent currently stays in Kenya. It is therefore clear to me that as the applicant is staying in America and is not in occupation, the prayer for an order not to be evicted is merely academic as she is not in occupation of the same.
- 20. I find that the only interest she has is the preservation of the property from sale or transfer of the property to any other person until the matrimonial property cause is heard and determined. I therefore dismiss the notice of motion dated 12.9.2022.
- 21. I however, issue an injunction to the respondent not to transfer, alienate, dispose of or sale LR. NO Kahawa 12149/38 pending the hearing and determination of the matrimonial property suit.

**DELIVERED AT NAIROBI THIS 14TH DAY OF AUGUST, 2024**

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**S. N. RIECHI**  
**JUDGE**

