



**PWN v WNN (Matrimonial Cause E008 of 2022)
[2023] KEHC 22812 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22812 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MATRIMONIAL CAUSE E008 OF 2022
HK CHEMITEI, J
SEPTEMBER 28, 2023**

BETWEEN

PWN APPLICANT

AND

WNN RESPONDENT

RULING

1. The applicant filed the application herein dated 21st November 2022 seeking the following orders;
 - (a) That pending the hearing and determination of this suit, this honourable court be pleased to issue a temporary injunction restraining the respondent by himself his agents and or servants from alienating, selling, disposing or transferring all that parcel of land known as LR xxxx 3/138 situated within Nakuru county without the consent of the applicant.
 - (b) That this honourable court order compliance of the orders issued in Nakuru ELC Misc Application No E011 of 2022 in relation to this property.
 - (c) Costs of the application be borne by the respondent.
2. The application is supported by the applicant’s affidavit sworn on the same date and the grounds on the face of the application.
3. The applicant contemporaneously filed the originating summons as well when filing this application.
4. The application was opposed by the respondent vide his replying affidavit sworn on December 14, 2022 and that of M W M his sister.
5. The applicant deponed that they married under the tenets of kikuyu customary law with the applicant and were blessed with four children. In the course of their marriage they purchased land parcel number Bahati/Engorusha Block 3 /138 where they set up their matrimonial home.



6. She went on to state that they had matrimonial differences and she was forced to register a restriction on the said parcel of land. The respondent filed an application at the Land and Environment Court namely case No E011 of 2022 and the court delivered its verdict. The said court directed that there ought to be a determination as to whether the said parcel of land was a matrimonial property or not hence the filing of this application.
7. She stated that unless the orders are granted the respondent intends to dispose the land which shall render her and the children destitute. She thus prayed that the injunction orders be issued pending the determination of the suit.
8. The respondent on his part denied that he was married to the applicant under the tenets of Kikuyu customs and that the relationship between him and the applicant was an off and on one. That the applicant at some point left the matrimonial home and went to her parents.
9. He said that he has developed the property single handedly and he demonstrated this by attaching copies of the architectural designs and other receipts showing the purchase of building materials.
10. He said that contrary to the averments by the applicants he only recognised two of the children and the rest belonged to someone else. He said that the applicant had chased him from the matrimonial home and that he has been sickly and he needs to charge that property so that he could get money for is medication.
11. The applicant rebutted the respondent's allegations through the further affidavit in which she accused the respondent of involvement with other women and that the intention was to sale the property and thereafter settled his other wife. She prayed that the orders from the ELC court be effected.
12. The court directed the parties to file written submissions which they have complied.
13. The applicant seems to have submitted wholesomely, that is to include the issues raised in the originating summons. I think what was before the court was the interim application for injunction. The substantive suit shall be heard later and after proper directions have been issued in the usual manner.
14. The respondent's submissions largely dwelt on the application and whether the application fitted squarely on the principles laid out in the *Giella v Cassman Brown Co Ltd* (1973) EA case.
15. Without belabouring the point i find that there are serious issues to be determined in the substantive suit. Of great inquiry will be whether there was any marriage between the two persons herein and if so under what circumstances.
16. At the same time, it has to be established whether in light of the affidavit evidence on record the applicant contributed to the purchase of the suit land as well as the development of the same. Was the house developed jointly or not.? Essentially the question would be whether the land and the house forms the matrimonial property.
17. To this end therefore it is necessary to preserve the status quo. The issue of access to the house and the property by both parties should be unhindered pending the determination of the above issues. The same should however not be disposed by the respondent despite the medical challenges he was facing as that will render the suit superfluous.
18. In the premises I think I have stated enough to suggest that I find merit in the application. The admission by the respondent that the two children out of his union with the applicant lance credence to the need to preserve the property for now.



19. The ruling by the ELC court was basically and rightfully throwing the ball to this court to ascertain whether the property was matrimonial or not. The said court did not have the relevant jurisdiction to entertain the same.
20. Consequently, the application is allowed as follows;
- (a) Pending the hearing and determination of this cause there be a temporary injunction restraining the respondent his agents and or servants from charging disposing or in any other way dealing adversely with land parcel number Bahati/Engoshura Block 3/138.
 - (b) The respondent pending the hearing and determination of this cause shall have unlimited access to the above said parcel of land and or development thereon.
 - (c) Costs shall await the outcome of the cause.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 28TH DAY OF SEPTEMBER 2023.

H K CHEMITEI

JUDGE

