



**NAO v CJAA (Matrimonial Cause E002 of 2024)
[2025] KEHC 3000 (KLR) (7 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3000 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MATRIMONIAL CAUSE E002 OF 2024**

**DK KEMEL, J
MARCH 7, 2025**

BETWEEN

NAO APPLICANT

AND

CJAA RESPONDENT

RULING

1. The Applicant herein filed the present Originating Summons (OS) dated 10/6/2024 and contemporaneously filed an application of even date seeking several reliefs pursuant to the provisions of sections 1A,1B and 3A of the Civil Procedure Act, Order 37(11), Order 40 Rules 1, 3 and 4, Order 51 Rule 1 of the Civil Procedure Rules, Section 2, 7, 12 and 17 of the Matrimonial Property Act No. 49 of 2013, Rule 7(3), (4) of the Matrimonial Property Rules 2022, Articles 45(3) of the Constitution. The same seeks the following reliefs namely:
 - i. Spent.
 - ii. Spent.
 - iii. That the Honourable court be pleased to issue a temporary injunction restraining the Respondent herein either by himself, his agents, employees and/or servants from disposing off, dealing, entering and/or in any other way interfering with the matrimonial properties in particular Land title Gem/Kaudhi/1651 and North Sakwa/Nyawita/2053 and Motor Cycle registration No. KMFX-430F pending the hearing and determination of this suit.
 - iv. That this Honorable court be pleased to issue an order that all the proceeds from the applicant’s and respondent’s rental houses constructed on parcel number North Sakwa Nyawita/2053 situate within Bondo town be deposited in a joint interest earning account in the names of both the applicant and the respondent pending the hearing and determination of the application and the main suit.



- v. That the court be pleased to issue a declaration that Land title number Gem/Kaudhi/1651 and North Sakwa/Nyawita/2053 and motorcycle registration number KMFx-430 F as matrimonial property.
 - vi. That this court be pleased to issue a declaration that the matrimonial home situated on land title number Gem/Kaudhi/1651 and rental houses situated on land parcel number North Sakwa/Nyawita/2053 and Motor cycle registration number KMFx-430F are held by the Respondent in trust for the Applicant.
 - vii. That the costs of the application be awarded to the Applicant.
2. The application is supported by the grounds set out on the face thereof as well as the supporting affidavit of the Applicant sworn on even date.
 3. The Applicant's gravamen is inter alia; that the applicant and the Respondent solemnized their marriage on 10th December 2019 at the Registrar of Marriages in Kisumu as per an annexed marriage certificate No. 418074; that prior to the said solemnization, the two had cohabited for a long time as a husband and wife; that they were blessed with three children who were begotten during the subsistence of the marriage who include, Sheila Atieno born on 01/08/2002, Elizabeth Ongola born on 18/03/2004 and Audrey Brilly Akinyi born on 25/03/2013 as per annexed certificates of birth; that the Respondent has since filed a divorce petition which the applicant answered and cross-petitioned seeking the dissolution of their marriage in Bondo PMCC Divorce Cause No. E003 of 2024; that during the pendency of their marriage particularly in the year 2020 around the month of March, they acquired properties jointly and constructed their matrimonial home on parcel number Gem/Kaudhi/1651 and that the jointly constructed rental houses situate on parcel number North Sakwa/Nyawita/2053 as per annexed photographs; that they have been jointly benefitting from the proceeds of the rental houses they jointly constructed on parcel number North Sakwa/Nyawita/2053 until January 2024; that the applicant contributed in the construction of their matrimonial home situate on parcel number Gem/Kaudhi/1651 and rental houses on North Sakwa /Nyawita/ 2053 from her personal savings and her earnings as an accountant; that it is just and fair that the subject matter of this suit be preserved pending the hearing and determination of the main suit; that she beseeches this court to stop the respondent from further interference with the suit properties.
 4. In his response, the Respondent filed a replying affidavit sworn on 23/12/2024 wherein he averred inter alia; that he confirmed having married the applicant under civil law at the Attorney General's office in Kisumu; that he disputes the properties being matrimonial as the same were acquired before they got married in that the said properties were acquired during the subsistence of his marriage to his former wife (now deceased) and not the applicant herein; that as regards the motorcycle, he averred that he had bought the same through a loan which he currently services as per annexed bank statement; that the rental properties on parcel 2053 were established through the joint efforts of himself and the Applicant but that he had already refunded her the sum of Kshs 1million that she had lent him as a debt; that the rental units have been distributed to the children and registered in their names; that he has no intention of disposing the properties as alleged by the Applicant; that the claims by the Applicant are speculative and lack any basis and should be dismissed and that any outstanding issues be resolved amicably in the interest of justice and family harmony.
 5. The application was canvassed by way of written submissions. Both parties have duly complied. The submissions were mainly a reiteration of the parties' averments in their rival affidavits.
 6. I have considered the instant application and the rival affidavits and submissions by both learned counsels. It is not in dispute that the parties herein solemnized their union through a civil marriage and



that they have a marriage certificate to that effect. It is also not in dispute that the parties are currently embroiled in a divorce petition that had been lodged by the Respondent against the Applicant which is currently pending determination before Bondo Chief Magistrate's Court. It is also not in dispute that the parties herein have laid claims onto the three properties enumerated in their rival affidavits. It is also not in dispute that the parties are yet to prosecute this originating summons proper by the presentation of both oral and documentary evidence. That being the position, I find the issue for determination is whether conservatory orders are merited at this stage pending determination of the suit in terms of prayer No. 3 of the application.

7. The dispute involving the parties herein revolve around the sharing and/or distribution of matrimonial properties and hence the relevant provisions of the law are the Matrimonial Property Act No. 49 of 2013 and Article 45(3) of the constitution.
8. Article 45(3) of the Constitution stipulates that parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage. Prima facie and from the averments in the rival affidavits, it is clear that the parties herein have a stake in the properties mentioned herein. The parties will present their rival evidence during the hearing of the Originating Summons once these interlocutory proceedings are determined.
9. Section 6 of the Matrimonial Properties Act provides for the meaning of matrimonial property as follows:
 - (1) For the purposes of this Act, matrimonial property means—
 - (a) the matrimonial home or homes;
 - (b) household goods and effects in the matrimonial home or homes; or
 - (c) any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.
20. Section 7 of the Matrimonial Properties Act deals with ownership of matrimonial property as follows:

Subject to section 6(3), ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition, and shall be divided between the spouses if they divorce or their marriage is otherwise dissolved.
20. In the instant case, the Respondent has averred that the suit parcels of land where the matrimonial home is built and the rental houses established should not be considered matrimonial properties as the Applicant did not contribute to its acquirement. The Respondent has however not controverted the evidence by the Applicant that she contributed substantially to the construction of the matrimonial home and the rental houses in Bondo. It is also noted that the Respondent acknowledges that the Applicant did contribute towards the renovation of the matrimonial home and also loaned him some money towards the construction of the rental houses but that he later refunded the monies. The Respondent further claimed that the motorcycle should belong to him solely. It is thus clear that both parties are laying a stake in all these three properties and therefore they will have their day in court during the hearing of the Originating Summons upon conclusion of these interlocutory proceedings.
21. The Applicant has sought for a temporary injunction in order to preserve the properties pending determination of the suit in the end. The Applicant is thus under obligation to discharge the mandatory conditions for the grant of the said equitable relief namely, that her case has a prima facie case with a probability of success, that she stands to suffer irreparable harm not compensable by an award of damages and that in the event of doubt the balance of convenience tilts in favour of the grant of the prayer sought. These principles were enunciated in the cases of *Giella v Cassman Brown* [1973]



EA 358, Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2001] eKLR and Nguruman Ltd v Jan Bonde Nielsen & 2Others [2014]eKLR.

22. It is trite that an interlocutory injunction is made during the early stages of suit which prohibits the parties from doing certain acts in order to preserve the status quo pending ruling or outcome of the suit and that the purpose thereof is to keep the parties in their respective positions as they await the determination of the suit.
23. Looking at the rival affidavits of the parties herein, it is clear that both have laid a stake in all the three properties and thus the need to preserve them pending determination of the Originating Summons. If the injunction sought is not granted, I find that the Applicant stands to suffer great loss and damage in that the properties might be disposed of and that she will end up with nothing. Indeed, matrimonial properties are emotionally tied to the lives of the couple and therefore a loss will lead to psychological stress and trauma due to the attachment they have with the properties. Even though the Respondent has vehemently opposed the application, he has confirmed that all the assets are family property. That being the position, I find that an order for a temporary injunction is merited in the circumstances. It is my view that the Applicant has satisfied the conditions for the grant of the order sought pending determination of the suit.
24. In the result, it is my finding that the Applicant's application dated 10/6/2024 in terms of prayer No. 3 pending determination of the suit has merit. The same is allowed as prayed in terms of prayer 3 thereof. The costs of the application at this stage shall abide the outcome of the suit.

Orders accordingly.

DATED AND DELIVERED AT SIAYA THIS 7TH DAY OF MARCH, 2025.

D. KEMEI

JUDGE

In the presence of:

N/A Mulinge.....for Applicant

CJAA. Respondent

Ogendo.....Court Assistant

