



**SEN v FWK (Matrimonial Cause E002 of 2024)  
[2025] KEHC 4508 (KLR) (10 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4508 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
MATRIMONIAL CAUSE E002 OF 2024  
GL NZIOKA, J  
MARCH 10, 2025  
IN THE MATTER OF APPLICATION FOR  
DECLARATION AND SUBSEQUENT DIVISION OF  
MATRIMONIAL PROPERTY**

**BETWEEN**

**SEN ..... APPLICANT**

**AND**

**FWK ..... RESPONDENT**

**RULING**

1. The subject matter herein is a chamber summons application dated 23<sup>rd</sup> August 2023 filed on the year 23<sup>rd</sup> August 2024. The application is based on the provisions of, Articles 45(3) and 159 of the Constitution of Kenya, 2010; Sections 4, 6, 7, 12, 14 & 17 of the Matrimonial Property Act No. 49 of 2013; Rules 3 (l) (2), 7 (2) (3), 20 (2) (3), 21 & 22 of Matrimonial Property Rules, 2022; Sections IA, 1B, 3A & 63 of the Civil Procedure Act Cap 21 Laws of Kenya; Order 40, Rules 1 to 4 of the Civil Procedure Rules; and all other enabling provisions of the law.
2. The applicant is seeking for the following orders: -
  - a. Pending hearing and determination of this application, this Honourable court be pleased to issue an order of injunction restraining Respondent by herself, her agents, servants, employees and or any other person whomsoever acting under her instructions from selling, leasing, sub-leasing, charging mortgaging, subdividing, partitioning, exchanging, creating an easement or wayleave, transferring, erecting structures, blocking ingress and/or egress by the Applicant into all that parcel of land known as Gilgil/Gilgil/ Block 1/11956 (Kekopey), Gilgil/Gilgil/ Block1/11972 (Kekopey), & Gilgil/Gilgil/Block1/9825 (Kekopey).



- b. Pending inter parties hearing and determination of this application and/or further orders, this Honourable court be pleased to issue an order of injunction restraining Respondent by herself, her agents, servants, employees and or any other person whomsoever acting under her instructions from selling, leasing, charging, exchanging or otherwise disposing Motor Vehicle registration number KBR 471R Mitsubishi Outlander CWSW.
  - c. Pending hearing and determination of the main suit, this Honourable court be pleased to issue an order of injunction restraining Respondent by herself, her agents, servants, employees and or any other person whomsoever acting under her instructions from selling, leasing, sub-leasing, charging mortgaging, subdividing, partitioning, exchanging, creating an easement or wayleave, transferring, erecting structures, blocking ingress and/or egress by the Applicant into all that parcel of land known as Gilgil/ Gilgil/ Block 1/11956 (kekohey), Gilgil/ Gilgil/ Block 1/11972 (Kekohey) & Gilgil/ Gilgil/ Block 1/9825 (Kekohey).
  - d. Pending inter parties hearing and determination of the main suit, this Honourable court be pleased to issue an order of injunction restraining Respondent by herself, her agents, servants, employees and or any other person whomsoever acting under her instructions from selling, leasing, charging, exchanging or otherwise disposing Motor Vehicle registration Number KBR471R- Mitsubishi Outlander CWSW.
  - e. The costs of this application be provided for.
3. The application is based on the grounds thereto and a supporting affidavit of the even date sworn by the applicant. He avers that, he got married to the respondent on 5<sup>th</sup> September 2009 at Naisoya African Inland Church as evidenced by the annexed marriage certificate. That the union has been blessed with two (2) children, Jimmy Brian Munene and Byron Saitabao, as supported by the annexed birth certificates.
  4. That in the year 2023 the marriage broke down irretrievably and he filed a divorce case. That during the pendency of the marriage he acquired property listed at paragraph 7 of the supporting affidavit and registered the same in the name of the respondent. Further he entrusted the respondent with the registration of matrimonial property in her name as he believed that she was holding it in trust for him and their children. Further that he authorized her to sign land and motor vehicle purchase agreements.
  5. The applicant further avers that, the property Gilgil/Gilgil Block 3/11 is a subject of litigation in Nakuru Law Courts although he has no particulars of the case, as the respondent has refused to update him on the particulars of the case. Further on 22<sup>nd</sup> November 2022, he applied for caution over Gilgil/ Gilgil Block 1/11956 (Kekohey) Gilgil/Gilgil Block 1/1972 (Kekohey) and Gilgil/Gilgil Block 1/9825 Kekopey.
  6. That recently persons claiming to be prospective buyers have been seen viewing the parcels of property and he is apprehensive that, the respondent may dispose off the properties. Further the vehicle in the respondent's possession is KBR 471R and that unless a court order is issued, he stands to suffer prejudice if the property is disposed of
  7. The applicant annexed to the affidavit in support of the application the following documents: -
    - a. Marriage certificate
    - b. Children's birth certificates
    - c. Document entitled "MCDC/E062/2023 citation. S.E.N v F.W.K tracking No. GX2W2023



- d. Bank statement from Cooperative Bank in the name of Solomon Enkobei Nchoko described as Co-op Salary/Remittance account”
  - e. Agreement for sale of plot No. Gilgil/Gilgil Block 1/11956 measuring approximately 0.0417Ha and Gilgil/Gilgil Block 1/11972 Kekopey measuring approximately 0.412Ha
  - f. Agreement for sale of plot No. Gilgil/Gilgil Block 1/9825 measuring approximately 0.042Ha
  - g. Agreement for sale of motor vehicle registration No. KBR 471R Mitsubishi Outlander, dated 3<sup>rd</sup> August 2016
  - h. Proceedings in CMCC No. 120 of 2015 Faith Wanjiru Kiburi v Mwangi Charles Mahinda
  - i. Restriction on the subject properties herein registered at the Registrar of Lands
  - j. Search certificates in relation to the subject properties
8. Upon consideration of the application, the court ordered the application be served for a response within five (5) days of the date of the order. On 2<sup>nd</sup> October 2024, the applicant’s counsel told the court that the respondent had been served with the orders that required her to file a response to the application. However, by that date the respondent had not filed any response to the application. All the same the matter was stood over to 30<sup>th</sup> October 2024 for oral hearing and the court ordered the respondent be served accordingly.
9. On 30<sup>th</sup> October 2024, the respondent was not in court, but the matter could not be heard for reasons recorded, and was stood over to 19<sup>th</sup> November 2024. Again the respondent was absent despite having been served with the hearing notice and an affidavit of service to that effect filed. The application was canvassed in her absence and ruling date set for 6<sup>th</sup> December 2024, but deferred to 4<sup>th</sup> February 2025 as the court was not sitting, and then 10<sup>th</sup> March 2025.
10. From the foregoing it is evident that the respondent has opted not to defend the matter. Therefore, the application is unopposed. Consequently, I grant prayers (5) and (6) thereof. In the meantime, the main matter should be set down for hearing within 30 days of the date of this order. The costs of this application to abide the outcome of the main suit.
11. It is so ordered.

**DATED, DELIVERED AND SIGNED ON THIS 10<sup>TH</sup> DAY OF MARCH 2025.**

**GRACE L. NZIOKA**

**JUDGE**

In the presence of:

Ms. Sabaya for the applicant

N/A for the respondent

Ms Hannah: court assistant

