



**MWG v MKM (Matrimonial Cause E001 of 2024)  
[2025] KEHC 4703 (KLR) (7 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4703 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
MATRIMONIAL CAUSE E001 OF 2024  
LN MUTENDE, J  
APRIL 7, 2025**

**BETWEEN**

**MWG ..... APPLICANT**

**AND**

**MKM ..... RESPONDENT**

**RULING**

1. The Applicant herein filed an application dated 4<sup>th</sup> October, 2024, seeking orders thus;
  1. Spent.
  2. That this Honourable Court be pleased to grant a temporary injunction restraining the Respondent either by himself, his agents, servants, employees, and/proxies and trespassers from cultivating, leasing out, developing, selling, or in any other manner of interfering with that parcel of land known as Kinamba Mithiga Block 1/1XX4, and Motor Vehicle Reg. No. KCU 6X8J, Motor Cycle Reg. No. KMEW 6X3T and Quality Café in Kinamba Town pending the hearing and determination of this application inter-parties this being Matrimonial Properties.
  3. That a restraining order do issue directed at the Respondent to cease from harassing, interfering with or in any manner whatsoever frustrating the quiet use and occupation of the Applicant’s of the suit parcel of land and use of the suit motor vehicle and motor cycle being Matrimonial Properties pending the hearing and determination of this application inter-parties and the main suit.
  4. That costs of this application be borne by the Respondent.
2. The application is premised on grounds that;



- a. That the Respondent is on the verge of wasting and alienating Matrimonial Properties and in particular the property known as Kinamba Mithiga Block 1/1XX4, and Motor Vehicle Reg. No. KCU 6X8J, Motor Cycle Reg. No. KMEW 6X3T and Quality Café in Kinamba Town.
- b. That all the properties were jointly acquired during their marriage and therefore fall within the meaning of matrimonial property as envisaged under the *Matrimonial Property Act*.
- c. That the Applicant and the children will be left destitute and economically disadvantaged unless the actions of the Respondent are curtailed by this Honourable Court.
- d. That Applicant has five issues to support with returns from the business she rans using the assets mentioned herein and she provides a roof over their heads in the Matrimonial home.

All properties were jointly acquired during their marriage hence fall within the meaning of Matrimonial Property; And, the Applicant and their 5 children will be left destitute and economically disadvantaged unless actions of the Respondent are curtailed.

3. The application is supported by an affidavit deposed by the Applicant where she depones inter alia that following her marriage to the Respondent in 1997 under the Customary Law it was solemnized through the Christian Marriage in 2011 and they were blessed with five (5) children and at the time of their marriage neither of them had acquired any property. They ran businesses together that enabled them to purchase assets including land, motor vehicles and even establish a restaurant.
4. That the Respondent is an alcoholic hence continues to misuse and abuse their properties and has an intention of disposing them yet they are the source of their livelihood. That unless barred, suit properties will be alienated to the detriment of her children and her rights as a spouse and she is afraid of her safety.
5. The application is unopposed.
6. Principles of granting an injunction were set out in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358 as follows;
 

“First an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly if the court is in doubt it will decide an application on the balance of convenience.”
7. This, is an equitable remedy. The application being unopposed it has been demonstrated by the Applicant that there is a chance of the matrimonial property being wasted. The Respondent was called upon to respond to the application which he failed to do hence the available evidence through the affidavit in support of the allegation establishes a prima facie case.
8. The Applicant has established the fact of the assets in question being their source of income that is used for shelter, education, health and welfare of the children which are basic requirements which suggests that if they are disposed, the harm to be occasioned will be irreparable.



9. The balance of convenience tilts in favour of the Applicant. In *Chebii Kipkoech v Barnabas Tuitoek Bargarioria & Another* [2015] eKLR it was held that;

“The meaning of balance of convenience in favor of the plaintiff is that if an injunction is not granted and the suit is ultimately decided in favor of the plaintiffs, the inconvenience caused to the plaintiff would be greater than that which would be caused to the defendants if an injunction is granted but the suit is ultimately dismissed.”

10. The Applicant and her children stand to suffer incase they are evicted and left destitute. All these call for issuance of injunctive orders. In the result, I find the application having merit and is hereby allowed in the following terms;

- a. Pending hearing and determination of the Originating Summons; the Respondent is restrained either by himself, his agents, servants, employees and/or proxies from interfering with the Applicant’s quiet use and occupation of parcel of land Kinamba/Mithiga Block 1/1244 being matrimonial property.
- b. A restraining order be and is hereby issued restraining the Respondent from harassing, interfering with, evicting or in any manner whatsoever frustrating the quiet use and occupation of the suit property and use of motor vehicles and motor cycle being matrimonial properties.
- c. Costs to be in the cause.

11. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 7<sup>TH</sup> DAY OF APRIL, 2025.**

**L.N. MUTENDE**

**JUDGE**

