



REPUBLIC OF KENYA



**JWK v MGM (Civil Appeal E101 of 2024) [2025] KEHC 6208 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6208 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CIVIL APPEAL E101 OF 2024  
EM MURIITHI, J  
MAY 15, 2025**

**BETWEEN**

**JWK ..... APPELLANT**

**AND**

**MGM ..... RESPONDENT**

**RULING**

1. The applicant filed this notice of motion dated 8<sup>th</sup> October, 2024 seeking the following orders:
  1. Spent.
  2. Spent
  3. That the honourable court be pleased to issue a temporary injunction restraining the respondent, his servants, agents, employees, assigns or anybody acting for or through him from selling, entering into an agreement for sale, wasting, or in any manner alienating or transferring title numbers I/T/xxxx (halfshare),I/T/xxxx, I/T/xxxx(half share), I/T/xxxx, I/T/xxxx and plot No. xx(x), [Particulars Withheld] Market and Motor Vehicle registration number KCN xxx F pending the hearing and determination of this suit.
  4. Spent.
  5. That the honourable court be pleased to order that the status quo in regard to title numbers I/T/xxxx(half share), I/T/xxxx, I/T/xxxx(half share), I/T/xxxx, I/T/xxxx and plot No. xx(x), [Particulars Withheld] Market and Motor Vehicle registration number KCN xxx F that is; the properties be preserved pending the hearing and determination of this suit.
  6. That the Officer Incharge of Kerugoya Police Station and the Land Registrar Kirinyaga do ensure compliance.
  7. That costs be provided for.



2. The application is supported by the grounds on the face of the application and the supporting affidavit of JWK. The applicant's case is that in 1996 the respondent, then a bachelor and her, then a spinster started cohabiting as wife and husband, they treated each other as spouse, their family and local community treated as such. They performed marriage rights under Kikuyu Customary Law and established our matrimonial home at xxxx. The marriage between the respondent and her was blessed with following issues: CWG born 1997 and BNG born 2003.
3. Further, the respondent and her jointly purchased and developed the following properties during the subsistence of their marriage, which were registered in the names of the respondent: title numbers I/T/xxxx (halfshare), I/T/xxxx, I/T/xxxx(half share), I/T/xxxx, I/T/xxxx and plot No. xx(x), [Particulars Withheld] Market and Motor Vehicle registration number KCN xxx F.
4. The applicant avers that on 29<sup>th</sup> August, 2024 judgment was entered in favour of the respondent as against the applicant/appellant in Chief Magistrate Court-Divorce Petition No. E030 of 2023-Kerugoya. Having been dissatisfied and/or aggrieved with the part of the judgment delivered on 29<sup>th</sup> August, 2024 and the subsequent decree the applicant/appellant appealed vide High Court Civil Appeal No. E101 of 2024 Kerugoya.
5. Further she is apprehensive that the respondent is in the process of alienating, selling and disposing the properties acquired through our joint efforts. She made non-monetary contribution through domestic work, management of matrimonial home, child care, companionship, management of family properties and farm work.
6. Lastly, unless the orders sought are granted the appeal stands the risk of being rendered moot and/or nugatory.
7. The respondent on 11<sup>th</sup> October, 2024 deposed to a replying affidavit and avers that the honourable court delivered its judgment and granted the applicant herein prayer no (a) and (b) above and stated that the union between the applicant herein and the respondent had been broken in 2004. The learned magistrate went ahead and ordered that the respondent's properties does not form part of matrimonial property since the same was acquired after separation of the parties.
8. Further that he acquired my own properties and was after the separation in 2004 and the applicant herein failed to prove that she contributed in any manner in acquiring my properties since she was acquiring her own at the same time. hence, the applicant has no legal basis to lodge an injunction on his properties.
9. Lastly, the application and appeal have no legal basis.
10. The applicant on 16<sup>th</sup> October, 2024 deposed to a further affidavit and reiterated the averments in the supporting affidavit.

### **Submissions**

11. Both parties did not file submissions. It was agreed that eh mater proceeds to ruling on the basis of the affidavits on record.

### **Issue**

12. Whether temporary injunction pending appeal should be granted.



## Analysis

13. I have considered the application, the affidavit in support, the response thereto as well as the further affidavit. In my considered view, the sole issue that arise for determination is whether the applicant has met the threshold for grant of temporary injunction pending hearing and determination of the appeal herein.
14. Order 42 Rule 6 (6) of the [Civil Procedure Rules](#) provides as follows:

“Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.”
15. The principles for grant of temporary injunction pending appeal are settled. In the case of [Patricia Njeri & 3 Others vs. National Museum of Kenya](#) [2004] eKLR, the court gave the following principles as governing grant of temporary injunction pending appeal:
  - a. “An order of injunction pending appeal is a discretionary which will be exercised against an applicant whose appeal is frivolous.
  - b. The discretion should be refused where it would inflict great hardship than it would avoid.
  - c. The applicant must show that to refuse the injunction would render the appeal nugatory.
  - d. The court should also be guided by the principles in *Giella vs. Cassman Brown* [1973] EA 358.”
16. In the case of *Giella vs. Cassman Brown* [1973] EA 358, the court stated the conditions for grant of interlocutory injunctions as follows;

“The conditions for the grant of interlocutory injunction are now I think well settled in East Africa. First an applicant must show a prima facie case with probability of success. Secondly an interlocutory injunction will not be normally 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.”
17. In the application, the appellant seeks to have orders that the status quo in regard to title numbers I/T/xxxxx (half share), I/T/xxxxx, I/T/xxxxx(half share), I/T/xxxxx, I/T/xxxxx and plot No. xx(x), [Particulars Withheld] Market and Motor Vehicle registration number KCN xxx F that is; the properties be preserved pending the hearing and determination of the appeal.
18. The applicant has stated that she has a prima facie case in that she was the wife of the respondent. They had cohabited as husband and wife and acquired the said properties together. Hence they are matrimonial properties.
19. The respondent avers that the learned magistrate went ahead and ordered that, the respondent’s properties does not form part of matrimonial property since the same was acquired after separation of the parties.
20. The issue of contribution by the applicant in acquisition of the said properties is prima facie and will be determined by this court while hearing the appeal.



21. On the issue as to whether the Appellant/Applicant shall suffer irreparable injury should the temporary injunction not be granted.
22. In the case of *Pius Kipchirchir Kogo vs. Frank Kimeli Tenai* (2018) eKLR the court stated that:

“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.
23. The applicant avers that she is apprehensive that the respondent is in the process of alienating, selling and disposing the properties acquired through our joint efforts. She made non-monetary contribution through domestic work, management of matrimonial home, child care, companionship, management of family properties and farm work.
24. The respondent in his response deposed that the applicant did not contribute in the acquisition of the properties. He acquired the properties in 2004 after they separated.
25. It is clear that the applicant will suffer irreparable loss if status quo is not maintained.
26. On the question of balance of convenience, the applicant avers that the respondent is about to sell the said properties. It would be just and fair to maintain the status pending the determination of the appeal and ownership rights interest in the properties.
27. The Court is minded to enforce the general principle of injunction pending appeal that when a party is exercising its undoubted right of appeal, the court should see that the appeal, if successful is not rendered nugatory. See *Wilson v Church No. 2* [1879] 12 Ch.D. 454.

### **Orders**

28. Accordingly, for the reasons set out above, the Court finds merit in the application dated 8/10/2024 and it is granted in terms of paragraphs 3 and 5 of the Notice fo Motion dated 8/10/2024.
  29. The Costs of the Application will be costs in the cause.
  30. Mention for directions as to hearing of the matter on 3/6/2025.
- Order accordingly.

**DATED AND DELIVERED THIS 15<sup>TH</sup> DAY OF MAY 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Mr. Ngigi Gichoya Applicant.

Mr. Michael Gakiri Miano in person.

