



**JGN v NWG (Civil Suit E036 of 2023) [2025] KEHC 5717 (KLR) (Family) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5717 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**FAMILY**  
**CIVIL SUIT E036 OF 2023**  
**PM NYAUNDI, J**  
**MAY 9, 2025**

**BETWEEN**

**JGN ..... PLAINTIFF**

**AND**

**NWG ..... DEFENDANT**

**RULING**

1. The Application for determination is Notice of Motion dated 5<sup>th</sup> June 2024 presented under Order 40 and rule 2 of the *Civil Procedure Act* and *Rules*. The Applicant, JGN seeks the following orders;
  1. Spent
  2. That pending the hearing of this Application, this Honourable Court be pleased to issue an injunctive Order restraining the Respondent by herself, servants, employees, agents or any other persons acting under her instructions or her interests from entering and/ or trespassing onto the Applicant's premises/ residence at LR No. Nairobi/ Block/[particulars withheld] situated at [particulars withheld] in Nairobi County pending the full hearing and determination of this suit.
  3. That costs of the application be provided for.
2. The Summons was supported by an affidavit of even date sworn by the applicant. The applicant avers that he and the respondent are divorced and decree absolute was issued on 28<sup>th</sup> December 2022. That since the divorce she is forcing herself into his residence at any time she feels like. Further that she is harassing and threatening him.
3. The harassment has escalated necessitating that he reports the matter to the Police. He states that his life and those of the Children is at risk.



4. In response, the respondent has sworn affidavit on 17<sup>th</sup> July 2024. She submits that it is not true that she is trespassing, as the home is the matrimonial home. That even after the divorce was finalised she continues to stay in the house. She only leaves the house when she is going on work trips.
5. In response and with leave of the Court, the Applicant swore a supplementary affidavit on 17<sup>th</sup> October 2024. He reiterates that the property is registered in his name. That she had moved out of the home in April 2024 and carried her belongings as evidenced by the statement of the Estate agent recorded with the police.
6. Further by her own admission in letter dated 13<sup>th</sup> May 2024 she indicated she had left the house in April of 2024.
7. Both parties complied with directions that they file submissions. The Submissions of the Applicant are dated 17<sup>th</sup> October 2024 and Supplementary Submissions dated 7<sup>th</sup> February 2025. The Respondents submissions are dated 22<sup>nd</sup> January 2025.
8. The applicant frames the following as the issue for determination-
  1. Whether the Application has merit?
 

Reference is made to the locus classicus decision in *Giella v Cassman Brown Co Limited* [1973] EA 358 in support of the averment that the applicant is entitled to injunctive orders having satisfied the principles therein. The Applicant further relies on the decision in *Nderu v Nganga* (Environment and Land Case No. 303 of 2019) [2023] KEELC 17118 (KLR) (25<sup>th</sup> April 2023) (Ruling) and submits that he has laid a basis for the grant of the orders sought.
9. The respondent submits that the application has no merit. She relies on the decisions in the *Giella Case (supra)*; *Cheru v Mwaniki* (Environment and Land Appeal E006 of 2021) [2024] KEELC 3497 (KLR) (2 May 2024) (Judgment); *Mboya v National Bank of Kenya & Another* (Civil Case E001 of 2024) [2024] KEHC 5786 (KLR) (16<sup>th</sup> May 2024) (Ruling) and *Paul Gitonga Wanjau v Gathuthi Tea Factory Company & 2 Others* [2016] eKLR for the submission that the applicant has not met the threshold for injunctive orders.

### **Analysis and Determination**

10. I have considered grounds of the application, the affidavit in response, the evidence of both parties and the respondent's submissions and find issues for determination as follows:
  - a. Whether Notice of Motion dated 5<sup>th</sup> June 2024 has met the threshold for the grant of injunctive orders
  - b. Who should pay the costs of the Suit
11. It is evident that at the time of presenting this Application, the respondent was in the house. The Applicant is opposed to her occupation. It is not lost on me that since the issuance of the decree absolute on 28<sup>th</sup> December 2022, the respondent continued to stay in the house.
12. Regardless of the circumstances under which the respondent left the house and the duration she was away, it is apparent that at the time of filing the application she is in the house. It is not therefore for the Court to restrain her as sought in the application.
13. The circumstances in this case can be distinguished from the ones in *Nderu v Nganga (supra)* where the applicant in that case moved to enforce an eviction order.



14. The applicant has not demonstrated to my satisfaction that he has a *prima facie* case. There is an ongoing case to determine whether or not the subject house is matrimonial property. It is not yet established that he has exclusive ownership to the house.
15. The Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR reiterated the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent and stated thus

It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. See *Kenya Commercial Finance Co. Ltd v Afraba Education Society* [2001] Vol. 1 EA 86. If the applicant establishes a *prima facie* case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage. If *prima facie* case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a *prima facie* case does not permit "leap-frogging" by the applicant to injunction directly without crossing the other hurdles in between. (Emphasis Supplied)

16. As stated the principles in the *Giella Case* are to be applied sequentially and where an applicant fails to muster a preceding hurdle the next one is not up for consideration. In this instance, the Applicant has not established a *prima facie* case. This issue he wants determined can be resolved by the hearing of the substantive Originating Summons on merit. Consequently, the following orders will issue;
  - i. The Notice of Motion dated June 5, 2024 is dismissed.
  - ii. Each party will be their costs
  - iii. The Originating Summons to proceed to hearing by Viva Voce evidence on July 2, 2025 at 1230pm in Open Court.

**SIGNED, DATED AND DELIVERED VIRTUALLY IN NAIROBI ON 9<sup>TH</sup> DAY OF MAY, 2025.**

**P M NYAUNDI**

**HIGH COURT JUDGE**

In the presence of:-

Fardosa Court Assistant

Guserwa for Applicant

