



**Njiru v Kanyuira (Matrimonial Cause E009 of 2024)
[2025] KEHC 6578 (KLR) (19 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6578 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
MATRIMONIAL CAUSE E009 OF 2024**

RC RUTTO, J

MAY 19, 2025

BETWEEN

WILLIAM KIREMA NJIRU APPLICANT

AND

RUTH MUTHONI KANYUIRA RESPONDENT

RULING

1. Before this Court is the Applicants' Notice of Motion filed under Certificate of Urgency dated 29th May 2024 seeking the following orders, that:
 - a. Spent
 - b. Spent
 - c. Pending the hearing of this suit, the Honourable court be pleased to issue an order of inhibition, inhibiting any dealings with L.R Nos. Donyo Sabuk/Komarock1/72987 and Donyo Sabuk/Komarock1/729986.
 - d. Spent
 - e. Pending the inter partes hearing of this suit, the Honourable Court do issue an order of temporary injunction against the Respondent restraining the Respondent from selling, transferring, using as collateral or in any way dealing with the land parcels Donyo Sabuk/Komarock 1/72987 and Donyo Sabuk/Komarock 1/729986
 - f. This Honourable court be pleased to grant such further or better orders as will meet the ends of justice.
 - g. The costs of the Application be provided for.



2. The Application is supported by the applicant's affidavit sworn on 29th May 2024 in which he deposed that the parties were cohabiting as husband and wife since 2013; they established a matrimonial home in Joska, Kangundo road and have two children; he caused to be purchased Donyo Sabuk/Komarock 1/72987 and Donyo Sabuk/Komarock 1/729986 and registered it in the name of the Respondent to hold it in trust for the family; he is unable to place a caveat as the property is registered in the name of the Respondent; he single-handedly developed the matrimonial home and has been taking care of the needs of the family including food, school fees, entertainment and other basic needs.
3. The applicant also deposed that the Respondent had abandoned the minors with him and her whereabouts remained unknown. That the respondent intends to dispose of the matrimonial property, and had already received a deposit of Kshs.100,000/=, a sale agreement for disposal of the said property at Twenty Five Million Kenya shillings and a signed affidavit of spousal consent signed by one Philip Mucee were produced as evidence.
4. The Applicant further contends that; the matter was reported to the Directorate of Criminal Investigations, Kiambu Headquarters and is currently under investigation. The Applicant indicates that he also contacted the Advocate who drafted the sale agreement who informed him that he would advise his client to stop the transaction.
5. In opposition the application, the Respondent filed a Replying affidavit dated 11th June 2024. She denied all the allegations contained in the applicant's supporting affidavit. She stated that her relationship with the Applicant has been on and off, and only lived as boyfriend and girlfriend and not as husband and wife. They met in 2013 and after a few months she was pregnant with Ryan Joshua Kirema after which she went back to her rural home. The Respondent deposed that she never heard from the Applicant for 5 years when they reunited and she got pregnant with Victoria Neema Kirema. The relationship did not work and they separated. She stated that she named the children after her parents as she gave birth to them while she was at her parents' home.
6. It was her position that they met two years ago and had no intention of living as husband and wife as the Applicant has his own family. That she has been living in a rental house in Nanyuki for which she pays rent and denies living in the suit properties as alleged by the Applicant. She singlehandedly takes care of the children including providing food, medical, shelter, school fees at Brookshine schools and clothing. She indicates that she is currently homeless after the Applicant destroyed her house and the children are under the custody and care of her brother who has enrolled them at Brainston Kindergarten & Primary School in Thindigua, Kiambu County and is currently paying their school fees.
7. The Respondent avers that they have never resided in the property known as L.R NOS. Donyo Sabuk/Komarock BLOCK 1/72787 and Donyo Sabuk/Komarock Block 1/72787 and that she singlehandedly purchased the properties without the contribution of the Respondent. Copies of the land purchase agreement were supplied as evidence.
8. The Respondent also averred that she constructed a home on the said properties and incurred all the construction expenses without the contribution of the Respondent.
9. The Respondent denied having an affair with Mr. Philip Mucee and averred that it is the Applicant who has in fact been trying to transfer the properties to himself by luring her into selling the property to Mr. Delican Kiogora Magambo at Kshs. 25,000,000/- and have the purchase price be paid into his bank account and not hers.
10. In addition, the Respondent denied ever living in Kithino sub-location, Tunyai location, Chakariga Sub-county in Tharaka Nithi County hence the contents in the Chief's letter purporting to have knowledge of the parties' cohabitation is based on falsehood and aimed at misleading the court.



11. The Respondent went on to allege that on or about 21st March 2024, the Applicant hired goons to destroy her house constructed on the suit properties. The matter was reported at KBC Police Station, Tala vide OB Number 21/3/2024 OB Ref No. 23. She therefore urged the court to dismiss the application with costs.
12. The Application was canvassed by way of written submissions. The Applicant's submissions are dated 9th September 2024. The applicant submitted on two issues, whether the suit properties form part of matrimonial properties and whether the court should issue the injunctive orders sought.
13. On the first issue, the applicant refers to sections 2 and 6 of the *Matrimonial Property Act* to submit that both parties have been residing in the suit properties together with their two children since 2021 until 2024 when the respondent, left and attempted to dispose of the property.
14. On the second issue, whether the injunction should grant, the applicant relied on the cases of *Giella vs Cassman Brown & Company Limited* (1973) E A 358, *Eso Kenya Limited vs Mark Makwata Okiya*, Civil Appeal no 69 of 1991, *Dr. Simon Waibaro Chege vs Paramount Bank of Kenya Limited*, Nairobi (Milimani) HCCC No 360 of 2001, *Nguruman Limited vs Jan Bonde Nielsen & 2 other* [2014] eKLR and *Moses C. Mubia Njoroge & 2 others vs Jane W. Lesaloi & 5 others* [2014]e KLR, to urge the court to grant the injunctive orders.
15. The applicant submitted that it had established a prima facie case with probability of success by showing that the property in dispute was bought and developed through his contribution and was in danger of being wasted, damaged or alienated .
16. He submitted that he would suffer irreparable loss not adequate of being compensated by an award of costs since the subject property was his matrimonial home and a lot of sentimental value, emotional and financial investment have been attached to it. It was his further submission that if the property is sold he will be left destitute together with the children and would suffer more loss since the respondent had no known source of income. The applicant urged the court to find that the balance of convenience tilts in his favour.
17. The Respondent relied upon her submissions dated 15th January 2025. She set out four issues for determination as follows; whether or not the applicant was married to the respondent; whether or not L.R Nos. Donyo Sabuk/Komarock Block 1/72786 and Donyo Sabuk/Komarock Block 1/72787 formed part of matrimonial property; whether the court should grant the orders sought pending hearing and determination of the suit; who bears the costs of the application.
18. On the first issue, the respondent submitted that the concept of presumption of marriage is inapplicable in the circumstance since it is not recognized by the *Marriage Act*.
19. On the second issue, it was submitted that there was no marriage and the applicant has not established a prima facie case that qualifies to be considered as a husband or that there was co-ownership and use of the suit property. That she is the absolute and indefeasible owner who enjoys absolute ownership of the suit property and all the rights accruing therein.
20. On whether the court should grant the orders sought pending hearing and determination of the suit, the respondent relied on the case of *Giella v Cassman Brown & Co Ltd* (1973) E.A 358 to urge the court that the application was an abuse of the court process, lacked the substance to justify the grant of the injunction and that none of the limbs in the *Giella case* (supra) had been satisfied. That if the orders are granted, the applicant will benefit from orders in respect of a subject matter he has no beneficial interest in.



21. She urged the court to consider the totality of consideration discernable and decline to grant the orders sought. She invited the court to find that the application is unmerited and proceed to dismiss it with costs being awarded to her.

Determination

22. I have considered the Application before this court, the response and the respective parties' submissions and the main issue arising for determination is whether the court should grant an interlocutory injunction to preserve the suit properties pending hearing and determination of the plaint dated 29th May 2024.

23. The law on temporary injunction is set out in Order 40, Rule 1 of the [Civil Procedure Rules, 2010](#) which provides as follows:-

“Where in any suit it is proved by affidavit or otherwise—

- a. That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- b. That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any Decree that may be passed against the Defendant in the suit, the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the Court thinks fit until the disposal of the suit or until further orders.”

24. The principles applicable in applications for grant of injunctions, as acknowledged by both parties, were set out in the Case of *Giella v Cassman Brown* [1973] EA 358 where the Court held that:

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. 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.”

25. In this instance, the applicant's contention is that the suit properties form part of the matrimonial properties registered in the name of the respondent, who is holding it in trust and on behalf of the family. That he acquired the properties and caused them to be registered in the respondent's name and have been living in the suit property. He claims a beneficial interest in the property as he contributed towards its acquisition and improvement including construction of the matrimonial home which the Respondent denies. He alleges that the respondent intends to dispose of the properties and if allowed, he will be rendered destitute and homeless and thus suffer great injustice.

26. In response the Respondent denies living with the applicant in the suit properties and being married to the Applicant but admits to having two children with him. The Respondent gives an outline of the payments she made and a detailed chronology of events showing no contribution from the Applicant. On the other hand, the Applicant also produced receipts to show his contribution. These



are documents whose veracity can only be determined upon each party presenting its evidence in court alongside the other contestations framed in the submissions.

27. At this stage, the court cannot interrogate the merits of the arguments beyond being satisfied as to the existence of a prima facie case to warrant issuance of the interlocutory orders as sought. It is common ground that the parties herein engaged in a relationship and at some point, even lived together. Their engagement, which the Respondent terms as “on and off” yielded two issues and in the intervening period the suit properties were acquired. At this juncture, the court cannot make a determination on the nature of the relationship; whether the suit properties form part of matrimonial property or whether the applicant contributed, and the extent of such contribution, if at all, towards acquiring the properties. This court notes that a determination of the issues raised by the parties calls for an examination of the facts and evidence which at this juncture the court is not required to do. However, the circumstances only succeed in revealing the existence of a prima facie case. To this end, I find that a prima facie case has been established.
28. The second principle to be satisfied is whether the Applicant will suffer irreparable damages due to the sentimental value attached and that he would not be adequately compensated by damages. The applicant pleads that he is likely to suffer irreparable harm if the orders sought are not granted as the respondent is likely to dispose of the suit which will then render him and the children destitute. The respondent stated that if the orders are granted the applicant will benefit from orders in respect of a subject matter he has no beneficial interest in.
29. This court finds that the issue of beneficial interest, if at all it exists, is yet to be determined. Each party is claiming interest in the suit property, which if disposed, the substratum of the suit would no-longer exist. The court notes that the respondent is intent on selling the property, a purchaser having been identified and a sale agreement executed. On her part, the respondent has not confirmed or showed that in the event the suit succeeds she will be in a position to compensate the applicant. She also denies ever residing on the said property. The contention seems more on where the proceeds of the sale will be deposited, between the applicant and the respondent, with the respondent accusing the applicant of luring her to sell the property.
30. The court is guided by the finding of the court in *Nguruman Ltd v. Jan Bonde Nielsen & 2 Others* (*supra*) where the court held that:

“On the second factor, the applicant must establish that he might otherwise suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the Applicant to demonstrate prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the Applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot adequately be compensated by an award of damages. An injury is irreparable where there is no stand by which the amount can be measured with reasonable accuracy or the injury or harm is of such a nature that monetary compensation of whatever amount, will never be adequate remedy.”
31. That being the position, the Applicant has demonstrated the irreparable damage he will suffer that cannot be compensated by damages in the event the court finds that he is a beneficial owner. The respondent only reiterates her rights as an indefeasible owner with absolute proprietorship rights as against the applicant. I therefore am satisfied that the applicant has satisfied the threshold under this second principle.



32. The third principle is that of the balance of convenience and I refer to the case of *Paul Gitonga Wanjau v Gathuthis Tea Factory Company Ltd & 2 others* [2016] eKLR where the Court stated as follows:

“...the court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which injury the applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right... Thus, the court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The court will seek to maintain the status quo in determining where the balance on convenience lies.”

33. For the reasons already stated above, the balance of convenience tilts in favour of the Applicant. I am inclined towards maintaining the status quo as has been subsisting over the suit property. This will allow the parties to fully ventilate their positions at the trial. Consequently, the application is allowed as follows:

- a. an order of temporary injunction is hereby issued against the Respondent restraining the Respondent from selling, transferring, using as collateral or in any way dealing with the land parcels Donyo Sabuk/Komarock1/72987 and Donyo Sabuk/Komarock1/729986 pending hearing and determination of this suit.
- b. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 19TH DAY OF MAY, 2025

RHODA RUTTO

JUDGE

In the presence of;

.....Applicant

.....Respondent

Sam, Court Assistant

