



**BWK v AKM (Civil Suit E072 of 2023)
[2025] KEHC 8340 (KLR) (Family) (13 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8340 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL SUIT E072 OF 2023
PM NYAUNDI, J
JUNE 13, 2025**

BETWEEN

BWK APPLICANT

AND

AKM RESPONDENT

RULING

1. The Applicant herein, BWK, presents Notice of Motion dated 6th August 2024, in which she seeks injunctive orders against the respondent, AKM, in regard to properties that she asserts are matrimonial properties. She asks that the injunctive orders be granted pending the hearing and determination of the Originating Summons dated 15th September 2023. The application is presented under Order 40 rule 1 of the Civil procedure rules and Section 3A of the *Civil Procedure Act*.
2. The grounds upon which the application is presented, is that the parties, now divorced acquired the subject properties during the pendency of the marriage. The Applicant contributed to the acquisition, development and maintenance of the properties. The Applicant asserts that the respondent ‘is incapable of dealing in good faith with regards to the shared property in the circumstances’ and that ‘the respondent is now disposing off the properties in order to disenfranchise me and ensure that my efforts and contribution towards wealth built in the marriage come to naught.’
3. The respondent, has sworn an affidavit in opposition. He urges that it has not been demonstrated that he is poised to dispose of the properties, further it is not demonstrated that the applicant contributed to the acquisition or development of the property. In addition he avers that two of the assets, do not comprise the matrimonial property (one because it was acquired before the marriage and the other because it does not belong to him; there is no proof of ownership.)



4. This reply by the respondent provoked a further affidavit sworn by the applicant in which she substantiated her earlier averments and countered the stance of the respondent.
5. Parties were then directed to canvass the application via written submissions.
6. The applicants submissions are dated 17th February 2025, she frames the issues for determination as
 - i. Whether the Applicant has legitimate claim to the properties
 - ii. Whether the Applicant has established a prima facie case
7. On the 1st issue it is submitted that the applicant has demonstrated that the properties were acquired during the pendency of the marriage and therefore comprise matrimonial property as defined by Section 6(1) of the *Matrimonial Property Act*. On the 2nd issue it is submitted that the applicant has established a prima facie case and is therefore entitled to the orders sought.
8. She relies on the decisions on IKO v JON [2023] eKLR; CKS V JSHS & Another [2019] eKLR; Giella v Cassman Brown & Co. Ltd (1973); Silvester Momanyi Marube v GiizarAhmed Motari & Another [2012] eKLR; Mrao Ltd v First American Bank of Kenya Ltd & 2 Others (2003) KLR 125.
9. The respondents submissions are dated 26th February 2025 and frames the following as the issues for determination-
 - i. Whether the Applicant has demonstrated and/ or showed that the respondent intends to sell all those properties mentioned therein.
 - ii. Whether the Applicant has proved that the properties listed therein form part of matrimonial properties
10. On the 1st issue it is submitted that the application does not meet the threshold set out in Order 40 rule 1 and that reference made to the decisions in Giella Case (Supra) and Mrao Ltd Case (Supra). On the 2nd Issue it is submitted that there applicant has not established that Property title No. M/ NO/ 1184 belongs to the respondent or the parties and that Tharaka/ Tunyua/ 529 was acquired prior to the marriage and that therefore these two properties cannot be matrimonial property as defined by Section 6 of the Matrimonial Properties Act.

Analysis And Determination.

11. Having considered the pleadings on record, rival submissions and the relevant law I discern that the issue for determination is-
 - i. Whether an injunction should issue against the respondent restraining him, his agents, servants proxies and/ or persons exercising authority from him from selling, charging, alienating, transferring, subdividing, giving in exchange or encumbering or in any other way disposing of all those parcels of land known as;
 - i. Title No. IR. No. 117120 (LR No. 186/826), measuring 0.1904 hectares situated in Garden Estate upon which the matrimonial home is built.
 - ii. Property Title Number IR No. 62403 (LR No. 15046/17), measuring 0.1792 Hectares situated in thika and is currently undeveloped.
 - iii. Property Title Number S. THARAKA/ TUNYAL.A./529 measuring 2.428 hectares situated in Tharaaka upon which another matrimonial home is built.



- iv. Property title Number PLOT No. M/NO/1184 situated in Thika Landless and is undeveloped
 - v. Property Plot No. 63, PEG No. B558A90 Measuring 40*80 ft situated in Tunyai Market Trading Centre
- ii. Who should pay costs?
12. As correctly stated by both parties the law on grant of interlocutory or interim injunctions is set out under Order 40 Rule 1 which provides-

Cases in which temporary injunction may be granted

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.
13. There is a plethora of court decisions elucidating the application of this provision including the celebrated decisions in the Giella case (Supra), Mrao case (Supra) and Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] KECA 606 (KLR); in summary for a party to succeed they must establish that they have
- i. A prima facie case with a probability of success
 - ii. The applicant stands to suffer irreparable harm if the orders sought are not granted, which will not be compensated by an award of damages
 - iii. The balance of convenience tilts towards granting the injunction.
14. In the Mrao case the Court had this to say on what constitutes a prima facie case-

It is true that the Court is not required at that stage to decide finally whether the evidence is worthy of credit, or whether if believed it is weighty enough to prove the case conclusively: that final determination can only properly be made when the case for the defence has been heard. It may not be easy to define what is meant by “prima facie case”, but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence...In civil cases a prima facie case is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant’s case upon trial. That is clearly a standard, which is higher than an arguable case.



15. The Originating Summons herein is presented under Sections 2,9,12 (1), 12(3), 14 of the *Matrimonial Property Act*. It is not in dispute that the parties once married have since dissolved their marriage. The applicant has placed before the Court documents in support of her assertion that the properties she claims a share of were acquired during the pendency of the marriage. She has also shown that in at least one property ownership has since changed since the parties were separated (The Garden Estate Property). There are allegations that money held in joint accounts has been transferred. In my assessment the applicant has established a prima facie case as required at this stage.
16. On the 2nd requirement, that the applicant must demonstrate that she will suffer irreparable loss that is not recoverable in damages, in the Nguruman case (Supra) the court pronounced as follows-
- ... that 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 face, 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 standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy
17. The applicant is apprehensive that the respondent will dispose of the assets. He denies that he has any intention of disposing or otherwise alienating the assets. She contends that the applicant has already transferred the asset at Garden Estate into his sole name in circumstances that are unclear to her. She has not had access to the matrimonial home. In the originating summons she seeks severance, subdivision and transference of her share in the matrimonial properties. This means that unless the property subject of the suit is preserved, she may not realise her judgment if successful. I find therefore, that she has met the 2nd requirement for an application of this nature.
18. The 3rd issue is with regard to the balance of convenience. All the assets are registered in the sole name of the respondent. He avers that he is not considering selling the assets and that in fact he is developing them. The respondent will not suffer any prejudice if the orders sought are granted whilst the applicant runs the risk of her summons being rendered a purely academic exercise in the event that the orders are not granted and the properties are alienated by the respondent.
19. In the circumstances I will allow the application and order that pending the hearing and determination of the Originating Summons the Respondent, or persons exercising authority from him are barred from selling, charging, alienating, transferring, subdividing, giving in exchange or encumbering or in any other way disposing of all those parcels of land known as;
- i. Title No. IR. No. 117120 (LR No. 186/826), measuring 0.1904 hectares situated in Garden Estate upon which the matrimonial home is built.
 - ii. Property Title Number IR No. 62403 (LR No. 15046/17), measuring 0.1792 Hectares situated in thika and is currently undeveloped.
 - iii. Property Title Number S. THARAKA/ TUNYAI.A./529 measuring 2.428 hectares situated in Tharaaka upon which another matrimonial home is built.
 - iv. Property title Number PLOT No. M/NO/1184 situated in Thika Landless and is undeveloped



v. Property Plot No. 63, PEG No. B558A90 Measuring 40*80 ft situated in Tunyai Market Trading Centre

20. The Originating Summons will proceed to hearing, party to take directions

21. Each party will bear their own costs.

It is so ordered

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY OF JUNE 2025.

P. M. NYAUNDI

JUDGE

In the presence of:

Muthoni for Applicant

Fardosa Court Assistant

