



**LMN v MNK (Matrimonial Case E015 of 2024)
[2025] KEHC 8859 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8859 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MATRIMONIAL CASE E015 OF 2024
FN MUCHEMI, J
JUNE 19, 2025**

BETWEEN

LMN APPLICANT

AND

MNK RESPONDENT

RULING

Brief facts

1. The applications for determination dated 2nd October 2024. The application dated 2nd October 2024 is seeking for the orders of an injunction restraining the respondent from selling, transferring, evicting or dealing in any manner, land parcels Thika Municipality Block XX/XXX and Plot XXX Makongeni Phase Iv Block X/XXX pending the hearing and determination of the suit. Further, the applicant seeks to have the court appoint a manager for all the rental units on Thika Municipality Block XX/XXX and Plot XXX Makongeni Phase IV for purposes of collecting rent. The application dated 12th October 2024 seeks for orders for this court to grant the prayers in the latter application pending the hearing and determination of the suit for the respondent is harassing the applicant’s tenants by issuing them with eviction notice and threatened to demolish the rental units.
2. In opposition to the application, the respondent filed a Replying Affidavit dated 12th March 2025.

The Applicant’s case

3. The applicant states that she was married to the respondent but they divorced vide a decree absolute issued in Thika Chief Magistrates Court Divorce No. E045 of 2024. During the subsistence of their marriage, they acquired several properties including Thika Municipality Block XX/XXX And Plot Xxx Makongeni Phase IV. The applicant states that they established their matrimonial home on Thika Municipality Block XX/XXX and constructed 21 rental units earning Kshs. 75,000/- per month. Further they have rental units on Plot Xxx Makongeni Phase IV which earns rental income of Kshs.



- 20,000/- per month. The applicant further states that she resides in the matrimonial house whereas the respondent lives with another woman.
4. Upon divorce, the applicant avers that the respondent threatened to evict her and sell both properties forcing her to place a caution on the said properties. Further, on 1st October 2024, the respondent poured waste, threw out her belongings and denied her access to her house. Additionally, the respondent attached her photograph on the door, poured animal blood and informed her that the photograph shall be used in her obituary.
 5. The applicant states that the respondent with the help of the area chief has diverted all rental income to himself threatening to evict any tenant who pays rent to her. The applicant argues that unless the court intervenes in the matter for she stands an imminent risk of eviction and harassment and her matrimonial interest in the properties shall be defeated if the properties are sold and her share of the rent wasted.
 6. The applicant further states that some of the tenants namely John Kyalo, Rebecca Kariithi Mugo and Boniface Mue Karani have been told to vacate at the end of the month and they have threatened to sue her in the Rent Restriction Tribunal. Further, the respondent has verbally threatened to demolish the rental units on the matrimonial properties to defeat her claim before the present court.
 7. The applicant argues that she is unable to protect her tenants from the respondent's harassment and if he manages to deny her income from her rental units, she stands to suffer great financial loss.

The Respondent's Case

8. The respondent states that he acquired the suit properties by himself on 9th May 1992 and he is the registered proprietor of Thika Municipality Block XX/XXX whereas the applicant is a licensee. The respondent further states that the applicant moved to Thika in December 1992 yet he acquired the suit property in May 1992 thus the applicant never purchased nor contributed to purchasing the same. The respondent avers that their matrimonial home was constructed in November 1992 to mid March 1993.
9. The respondent states that the applicant was a housewife until July 2008 when her brother gave her Kshs. 350,000/- to start a business thus she was not able to contribute financially into building their matrimonial home.
10. The respondent states that the applicant placed a caution on the suit property on 1st February 2022 claiming a licensee interest and not a beneficial or proprietary interest. The respondent avers that he has been collecting rent throughout from the time construction was completed. Upon judgment on 28th August 2024, the applicant instructed her advocates to write a demand letter requesting the tenants to be paying rent to her as they were divorced supporting his contentions that the tenants have not been paying rent to the applicant.
11. The respondent states that Plot No .XX Makongeni Phase 4 is not his property as there is no legal document supporting his ownership and as such, he is only the caretaker. As such, the property should be excluded from these proceedings. The respondent states that he stands to suffer substantially as he is the bona fide owner and proprietor of the suit property and he has always collected rent.
12. Directions were issued that parties put in written submissions and the record shows that the applicant complied by filing submissions on 9th May 2025. The respondent failed to comply.



The Applicant's Submissions

13. The applicant relies on the case of *Giella vs Cassman Brown & Co. Ltd* [1973] EA 358 and submits that she has a prima facie case as she has been living in the said matrimonial property since its acquisition, participated in the construction and development and has rental units which she has been collecting rent until the respondent issued letters to the tenants to move or pay rent to him. Further, the parties underwent a mediation process where they unanimously agreed that Thika Municipality Block XX/XXX is matrimonial property.
14. The applicant further submits that she and the respondent have been married and later divorced in the year 2024 and she has never known any other home apart from the suit property. The said property was acquired in the year 1992 after they had already started living together as husband and wife as evidenced by the birth of their first two children in 1988 and 1991 before the acquisition of the suit property.
15. The applicant submits that she stands to suffer irreparable harm as the respondent is continually harassing her and threatening her with eviction subjecting her to embarrassment and premature removal from the premises and she does not have an alternative accommodation arrangement. Further, she will be unable to run her general shop which is her source of livelihood rendering her homeless and without a source of livelihood.
16. The applicant argues that parties went for mediation and agreed that the suit property is matrimonial thus she has an equal right to continue occupying the premises without harassment from the respondent.

The Law

Whether the applicant has met the requisite conditions to warrant the granting of a temporary injunction.

17. The principles of interlocutory injunction are now well settled. Those principles were set out in *East African Industries vs Trufoods* [1972]EA 420 and *Giella vs Cassman Brown & Co. Ltd* [1973]EA 358. Restating the said principles, Ringera J, (as he then was) in *Airland Tours & Travel Limited vs National Industrial Credit Bank Nairobi (Milimani)* HCCC No. 1234 of 2002 set them out as follows:-
 - a. A prima facie case with a probability of success at trial;
 - b. The applicant is likely to suffer an injury, which cannot be adequately compensated in damages;
 - c. If the court is in doubt about the existence or otherwise of a prima facie case it should decide the application on a balance of convenience;
 - d. The conduct of the applicant meets the approval of the court of equity.
18. Similarly in *Dr. Simon Waiharo Chege vs Paramount Bank of Kenya Ltd Nairobi (Milimani)* HCCC No. 360 of 2001, Ringera J, (as he then was) held:-

“The remedy of injunction is one of the greatest equitable relief. It will issue in appropriate cases to protect the legal and equitable rights of a party to litigation, which have been, or are being or are likely to be violated by the adversary. To benefit from the remedy, at an interlocutory stage, the applicant must, in the first instance show that he has a prima facie case with a probability of success at the trial. If the court is in doubt as to the existence of such a case, it should decide the application on a balance of convenience. And because of its origin and foundation in the equity stream of the jurisdiction of the courts of judicature,



the applicant is normally required to show that damages would not be an adequate remedy for the injury suffered or likely to be suffered if he is to obtain an interlocutory injunction. As the relief is equitable in origin, it is discretionary in application and will not issue to a party whose conduct as pertains to the subject matter of the suit does not meet the approval of the eye of equity.”

A prima facie case with a probability of success at trial

19. What then constitutes a prima facie case? In the case of *Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others* [2003] KLR 125,

“The principles which guide the court in deciding whether or not to grant an interlocutory injunction are, first, an applicant must show prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless an 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....A mere scintilla of evidence can never be enough; nor can any amount of worthless discredited evidence. 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...The terms “prima facie” case, and “genuine and arguable” case do not necessarily mean the same thing, for in using another term, namely a suitable cause of action, the words “prima facie” are frequently used to refer to a case which shifts the evidential burden of proof, rather than as giving rise to a legal burden of proof in the manner of considering, which was in relation to the pleadings that had been put forward in the case. It would be in the appellant’s interest to adopt a genuine and arguable case standard rather than one of prima facie case, the former being the lesser standard of the two...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 being 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.”

20. It is not in dispute that the applicant and the respondent were married and later divorced vide decree absolute issued by the Chief Magistrate Court in Thika Divorce Cause No. E045 of 2024. Further, from the record parties engaged in court annexed mediation vide Thik/Med/086/2024 whereby parties agreed and executed a Mediation Settlement Agreement whereby they resolved that property described as Thika Municipality Block XX/XXXX is matrimonial property. The said settlement agreement was adopted by this court as an order of the court on 18th December 2024. Following the agreement that the suit property is matrimonial property, the applicant has a right to the said property equal to that of the respondent. Pending the determination of the court on how the property ought to be distributed, the applicant has a right to the said property and any rents that accrue from the said premises.
21. The respondent has further argued that property Plot No. XXX Makongeni Phase IV is not one of his properties and thus the same should be excluded from the present suit. It is difficult for the court to ascertain at this interlocutory stage whether the respondent is not the registered proprietor of the



said property when the applicant claims that they acquired the said property during the subsistence of their marriage. Thus parties will need to adduce evidence at the full trial. It is therefore my considered opinion that the applicant has established a prima facie case.

Irreparable Injury

22. In *Paul Gitonga Wanjau vs Gathuthi Tea Factory Company Ltd & 2 Others* [2016]eKLR the court considered Halsbury's Laws of England on what irreparable loss is and stated that:-

“First, that the injury is irreparable and second, that it is continuous. By the term irreparable injury is meant injury which is substantial and could never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired and the fact that the plaintiff may have a right to recover damages is no objection to the exercise of the jurisdiction by injunction, if his rights cannot be adequately protected or vindicated by damages.”

23. The applicant herein requires to demonstrate that she will suffer irreparable loss unless the injunction is granted, which loss would not adequately be compensated by an award of damages. The applicant submits that she is apprehensive that she may be rendered homeless and financially destitute as she knows no other home and runs a shop at the premises which is her source of livelihood. The applicant further states that she placed a caution on the suit property as she was apprehensive that the respondent would evict her and dispose of it.

24. The respondent has not denied the allegations of intimidating the applicant at their matrimonial home. The applicant has annexed photographs of the respondent throwing her belongings out and denying her access to the matrimonial home. It is thus my considered view that the fact that the respondent may evict and dispose of the properties at any time should this hostility continue. As such, a threat that the applicant may be left homeless in the possible event of eviction should the order sought be denied. The strength of the applicant's case is further boosted by the fact that the property in question has already been agreed between the parties in a mediation settlement that it belongs to both parties herein.

25. It is my considered view that the applicant will suffer irreparable injury which would not be adequately compensated by way of damages should the orders be denied.

26. The applicant has, in my view demonstrated substantial loss.

Balance of Convenience Test

27. In the case of *Pius Kipchirchir Kogo vs Frank Kimeli Tenai* [2018] eKLR, the court in dealing with the issue on balance of convenience held as follows:-

The meaning of balance of convenience in favour of the plaintiff is that if the injunction is not granted and the suit is ultimately decided in favour of the plaintiffs, the inconvenience 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. Although it is called balance of convenience it is really the balance of inconvenience and it is for the plaintiffs to show that the inconvenience caused to them would be greater than that which may be caused to the defendants. Should the inconvenience be equal, it is the plaintiffs who suffer? In other words, the plaintiffs have to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than which is likely to arise from granting it.



28. Relying on the foregoing decision of Pius Kipchirchir Kogo, and the facts of this application, it is my considered opinion that the balance of convenience tilts in favour of the applicant because the inconvenience caused to her will be much greater than that caused to the respondent if the injunction is not granted.
29. The applicant further seeks for orders of appointment of a manager to collect and manage the rent from their tenants. The facts of this case show that there exists deep conflicts between the parties to an extent that the two are unable to work together to share and manage not only the rental income but also their tenants. As such, I am of the considered view that the court requires to make orders for management of the property by an independent agency pending disposal of the suit.
30. In conclusion, I find the application merited and hereby make the following orders : -
- a. That an injunction do issue against the respondent/defendant restraining him from selling, transferring, evicting or dealing in any manner with land parcels Thika Municipality Block XX/XXX and Plot No. XXX Makongeni Phase IV Block X/XXX pending the hearing and determination of the suit.
 - b. That an injunction is hereby issued restraining the respondent from harassing, threatening the applicant or interfering in any way with her peaceful occupation of the matrimonial home on Thika Municipality Block XX/XXX until the determination of the suit.
 - c. That a property manager to be agreed on by the parties within 14 days be appointed to manage the rental units on Thika Municipality Block XX/XXX and Plot No.XXX
 - d. Makongeni Phase IV to manage the properties and collect rent to be deposited in a joint interest earning account in the joint names of the parties and in the event of any of the parties failing to comply in opening the bank account within fourteen (14) days from the date of this ruling, this court's Deputy Registrar is hereby authorized to execute the bank opening account documents on behalf of the defaulting party.
 - e. That the rental income collected and banked in the joint interest earning account shall be shared equally between the parties upon the determination of this suit and that this order shall not in any way influence to the division of property in this case.
31. Being a family matter, there shall be no order as to costs.
32. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 19TH DAY OF JUNE 2025.

HON. F. MUCHEMI

JUDGE

