



**ANM v JMK (Matrimonial Cause E058 of 2024)
[2025] KEHC 10423 (KLR) (Family) (18 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10423 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MATRIMONIAL CAUSE E058 OF 2024
PM NYAUNDI, J
JULY 18, 2025**

IN THE MATTER OF THE MATRIMONIAL PROPERTY ACT NO. 49 OF 2013

BETWEEN

ANM PLAINTIFF

AND

JMK RESPONDENT

RULING

1. By Notice of Motion dated 16th September 2024 and presented under rule 20 of the Matrimonial Property Rules Section 1A, 1B, 3 and 3A of the *Civil Procedure Act* and Order 40 of the Civil Procedure Rules, the Applicant ANM seeks the following orders, that
 1. Spent
 2. Pending the hearing and determination of the Summons dated 9th September 2024, herein this Honourable court be pleased to issue orders restraining the Respondent, his duly authorised agents, servants, employees, assigns and/ or personal representatives from alienating, disposing, selling, encumbering, assigning, transferring or in any other like manner dealing with the properties (herein after referred to as the subject matter properties) listed hereunder, being:
 - a. Matrimonial home in XXX, Kasarani
 - b. Matrimonial Home in Sagana
 - c. Rental property known as (particulars withheld) Plaza measuring approximately 23 by 14 metres or thereabouts erected on Plot No. (particulars withheld)A in LR 8479/4 being a sub division of LR 12406



- d. Motor vehicles KBS XXXX and
 - e. Motor Vehicle KAY XXXXZ
3. Pending hearing and determination of the Summons dated 9th September, 2024 this Honourable Court be pleased to preserve the subject properties.
 4. Pending hearing and determination of the Summons dated 9th September, 2024 this Honourable Court be pleased to issue an order compelling the Respondent and/or his duly authorized agents, servants, employees, assigns and/or personal representatives to allow the Applicant back to the matrimonial home in Mwiki, Kasarani and the quiet enjoyment thereof.
 5. Pending the hearing and determination of the Summons dated 9th September, 2024 this Honourable Court be pleased to issue an order compelling the Respondent to return to the matrimonial home in XXXX, Kasarani all the household items including the Applicant's personal items he forcefully took on 29th May, 2024.
 6. Pending the hearing and determination of the Summons dated 9th September, 2024 this Honourable Court be pleased to issue an order compelling the Respondent to allow the Applicant to revert to collecting rent from the Four (4) Houses on the 1st Floor of Kirumu Plaza located in XXXX, Kasarani as was the initial agreement between the Applicant and Respondent.
 7. Pending hearing and determination of the Summons dated 9th September, 2024 this Honourable Court be pleased to issue an order restraining the Respondent and/or his duly authorized agents, servants, employees, assigns and/or personal representatives from evicting and/or excluding the Applicant and/or in any way from interfering with the Applicant's peaceful living in the matrimonial home in Mwiki, Kasarani.
2. The Application is supported by her affidavit sworn on the 16th September 2024. The Applicant avers that she and the respondent were married in 1988 and the marriage was dissolved as per certificate of making decree nisi absolute dated 5th August 2024.
 3. During the subsistence of the marriage they jointly acquired the subject properties enumerated above. The Respondent has since evicted her from the matrimonial home at Mwiki and she is apprehensive that he may dispose the subject properties or otherwise encumber them, thereby jeopardising her interest.
 4. She seeks to be reinstated to the matrimonial house at Mwiki.
 5. The Respondent has sworn an affidavit in opposition on 30th September 2024. He confirms that he and the Applicant were married but denies that she contributed to the acquisition of the properties and their characterisation as matrimonial properties. He is categorical that the applicant left the house at Mwiki on her own volition and that he is in occupation of the house.
 6. Parties were invited to file submissions, unfortunately at the time I retired to write the ruling neither party had filed their submissions.

Analysis And Determination

7. I consider the following to be the issues for determination
 1. Whether the application dated 16th September 2024 has merit and injunction should issue as prayed.



2. Who should bear the costs herein
8. From my reading of the prayers I surmise that the Applicant seeks injunctive orders. The principles to guide the Court in an application seeking injunctive orders are set out in Order 40 of the Civil procedure rules which states-
Cases in which temporary injunction may be granted [Order 40, rule 1]
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.
9. 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. Afraha 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)
10. In the instant case the Applicant has established she has a prima facie case, there is evidence of a marriage, property was acquired during the pendency of marriage and there has been a termination of the marriage thereby necessitating a division of matrimonial property.
11. The property is registered in the name of the Respondent and this must be the basis of her apprehension that the properties may be dealt with by the respondent to compromise her interest. She submits that the Originating Summons will be rendered nugatory if the orders sought are not granted. She therefore seeks orders restraining the respondent from dealing with the properties.
12. However, I see no proof of ownership of the motor vehicles KBS ...X and KAY...Z for this reason, I find that a basis has not been laid for grant of injunctive orders in respect of these assets. The same applies with regard to the property at Sagana.
13. It is not denied by the respondent that the other properties were acquired in the pendency of the marriage. The balance of convenience does tilt in favour of restraining him from disposing of the following assets-



1. Matrimonial Home in Mwiki, Kasarani
 2. Rental property known as Kirumu Plaza measuring approximately 23 by 14 metres or thereabouts erected on Plot No. 172 A in LR 8479/ 4 being a sub division of LR 12406
14. The applicant also seeks a mandatory injunction restoring her to the house in Mwiki, in the case of Nation Media Group & 2 Others- vs- John Harun Mwau (2014) eKLR, the Court of Appeal stated:-
- It is trite law that for an interlocutory mandatory injunction to issue an applicant must demonstrate existence of special circumstance. A different standard higher than that in prohibitory injunction is required before an interlocutory mandatory injunction is granted.
- Besides existence of exceptional and special circumstances must be demonstrated as we have stated a temporary injunction can only be granted in exceptional and in the clearest of cases.
15. The respondent is in occupation of the house at Mwiki. The Applicant is staying in a rental home accommodated by well wishers. This was the situation subsisting before the Originating Summons was filed in Court. It has not been demonstrated that there are exceptional circumstances to warrant the granting of a mandatory injunction. Her interests will be safeguarded by the issuance of injunction to prevent any dealings by the respondent with the two assets enumerated in paragraph 12 above.
16. Accordingly, the application partially succeeds, pending the hearing and determination of the Originating Summons herein, an interim injunction will issue restraining the Respondent, his duly authorised agents, servants, employees, assigns and/ or personal representatives from alienating, disposing, selling, encumbering, assigning, transferring or in any other like manner dealing with the following properties-
- a. Matrimonial home in Mwiki, Kasarani
 - b. Rental property known as Kirumu Plaza measuring approximately 23 by 14 metres or thereabouts erected on Plot No. 172 A in LR 8479/ 4
17. The Originating Summons will proceed for hearing by way of viva voce evidence. The parties in compliance with Order 11 of the Civil Procedure Rules, exchange witness statements and list and bundle of documents within 45 days. The matter will be mentioned before the Deputy Registrar on 17th September 2025 to confirm compliance and take directions on the hearing of the Originating Summons.
18. On account of the relationship between the parties, there shall be no order as to costs.
19. Parties are at liberty to appeal. The party exercising their right of appeal to file appeal within 30 days.

It is so ordered.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 18TH DAY OF JULY, 2025.

P M NYAUNDI

HIGH COURT JUDGE

In the presence of:

Baroness holding brief for M/s Achieng for Applicant

Kinyua for Respondent

Fardosa Court Assistant

