



**PWK v KWK (Civil Case E001 of 2024)  
[2025] KEHC 10592 (KLR) (Family) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10592 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
CIVIL CASE E001 OF 2024  
HK CHEMITEI, J  
JULY 17, 2025**

**BETWEEN**

**PWK ..... APPLICANT**

**AND**

**KWK ..... RESPONDENT**

**RULING**

1. This court on 9<sup>th</sup> April 2024 directed the parties to respond and deal with the applications dated 2<sup>nd</sup> January 2024 filed by Mr. K and 4<sup>th</sup> January 2024 filed by K.
2. Upon retiring to peruse the same the court has seen it fit to deal with the application dated 2<sup>nd</sup> January 2024 which is interim in nature. The application dated 4<sup>th</sup> January 2024 is the main Originating summons and from the averments therein it shall be best dealt with through oral evidence as the issues are intertwined and needs further scrutiny. In effect affidavit evidence alone cannot suffice.
3. Beside this the properties mentioned in the substantive originating summons are more and the application dated 2<sup>nd</sup> January 2024 relates only to the Maisonette No. X Hillside Court which I think its safer to deal with first.
4. The application dated 2<sup>nd</sup> January, 2024, filed by the Applicant Mr. K seeks for orders that:-
  1. Spent.
  2. Pending the hearing and determination of this application, an interim order be issued granting the Applicant herein unlimited access to matrimonial home known as Maisonette No. X, Hillside Court at Upperhill (hereinafter referred to as “the matrimonial property”).



3. Pending the hearing and determination of the suit, an order do issue directing that the Respondent be restrained from denying the Applicant access from the matrimonial property.
4. Officer Commanding Capitol Hill Police Station to provide assistance to ensure compliance of Orders 2 and 3 above.
5. There be orders as to costs.
5. The application is based on the grounds on its face thereof and supported by affidavit sworn by KK on 2<sup>nd</sup> January, 2024.
6. He avers inter alia that they are former spouses, having married on 9<sup>th</sup> September, 1995. He purchased the matrimonial home on 30<sup>th</sup> April, 1999, which is currently registered in both their names. During their marriage, in 2013, he discovered that the Respondent was involved in an extramarital affair with her client, JKM. The Respondent admitted to the affair in an apology email dated 20<sup>th</sup> August, 2013. Following this, he filed for divorce on 4<sup>th</sup> April, 2014 due to her adultery. The divorce case remained in court for 9 years during which they attempted reconciliation and continued cohabiting in the matrimonial home.
7. That when the court listed the matter for notice to show cause on 14<sup>th</sup> September, 2023, and given their unresolved issues, he allowed the divorce petition to proceed. The marriage was eventually dissolved vide a decree nisi dated 25<sup>th</sup> September, 2023 and a decree absolute issued on 29<sup>th</sup> November, 2023 under Divorce Cause No. 121 of 2014.
8. Since then, the Respondent has expressly denied him access to the matrimonial home. On 16<sup>th</sup> November, 2023, when he returned to the property, the estate guard, acting on the Respondent's instructions, barred him from entry. Capitol Police Station declined to intervene, citing the matter as civil. Since then, he has been relying on friends, family or renting temporary accommodation via Airbnb.
9. He contends that he is legally and equitably entitled to the preservation of all properties acquired during the marriage, including the matrimonial home. He fears that without court orders granting him access, the Respondent may permanently deny him entry.
10. At the time of the property's purchase, he deponed further, the Respondent was a full-time student in the UK pursuing undergraduate and master's degrees fully financed by him, and therefore she did not contribute financially to the property's acquisition. Regardless, she has no right to exclude him from the home, especially since the marriage breakdown was due to her infidelity.
11. He also seeks access to retrieve his personal belongings, official documents and other important materials accumulated over 28 years, which are at risk of damage or misuse. Granting his application would serve justice as the matrimonial home was his residence for 24 years, and he has no alternative property or address in Nairobi.
12. The property was intended as a family home and a retirement haven for his later years, especially now that he is 60 years old. Notably, even with the divorce case in court for 9 years, they lived together amicably until 2023, with the Respondent admitting he was home until August 2023 before he travelled upcountry.
13. The application is opposed vide grounds of opposition, filed on 16<sup>th</sup> January, 2024; based on the grounds that:-



- 1) The Applicant's notice of motion is incompetent, incurably defective, frivolous for violating the mandatory provisions of Section 19 of the *Civil Procedure Act*, Orders 3 (1) and 40 (1) of the *Civil Procedure Rules*.
- 2) The Applicant's notice of motion is incompetent, incurably defective, frivolous and abuse of the process of the court for violating the rules of evidence and the mandatory provisions of Sections 65 and 106 B of the *Evidence Act*.
- 3) The Applicant's notice of motion seeks to violate the Respondent's right of protection from cruel, degrading and inhuman treatment under Articles 29 (d) and (f) of the *Constitution*. The same is misconceived, frivolous, an abuse of the process of the court as it is inherently inappropriately before the present judicial forum. The Applicant is attempting a veiled and malicious attempt to relitigate allegations that he raised in divorce court and was unable to prove the same in a deliberate and sole purpose and attempt to cause the Respondent great embarrassment before this honourable court.
- 4) The Applicant's notice of motion, with its supporting affidavit, are highly misplaced before this honourable court, the same seeks to subject the Respondent to double jeopardy and is therefore an abuse of the court process, bad in law, inherently defective, misconceived, mischievous, in bad faith, is frivolous and vexatious.
- 5) The Applicant's notice of motion is solely meant to camouflage his misconduct by engaging in the following actions, among others:-
  - a. Cyber bullying the Applicant in a bid to intimidate her and stop her from pursuing and asserting her proprietary rights in violation of Article 29 of the *Constitution*.
  - b. Physical threats and verbal attacks and forcefully entering into the matrimonial home's compound at night (after the divorce was pronounced) in violation of the Respondent's right to protection from violence, psychological torture, cruel, inhuman and degrading behaviour under Article 29 of the *Constitution* in complete disregard for the children of the marriage.
  - c. Violations and dispossession of the Respondent's proprietary rights by irregular disposal of matrimonial property and misappropriation of proceeds of sale without the Respondent's consent during the subsistence of the marriage in violation of the Respondent's rights under Article 45 of the *Constitution*.
  - d. Dispossession of the Respondent and children of the marriage by starting another family while still married to the Respondent and deliberately denying provision for the children of the marriage, and in violation of the children's rights under Article 53 (1) (d) (e) and Article 53 (2) of the *Constitution* under the Children's Act.
14. The Respondent seeks for dismissal and striking out of the said notice of motion together with its supporting affidavit and annexures with costs to the Respondent.
15. The court has read the submissions by the parties which were essentially filed in support of the two applications.
16. For now, I find that the real issue is whether to allow the Applicant access the matrimonial home as per his prayers. There is no doubt that the same is registered in their joint names.



17. There is no doubt also that before dealing with its acquisition which I find germane and shall be dealt with during the substantive hearing there must be access by both parties. Although the Respondent alleged that it is the Applicant who walked away after another remarriage, he still has a say and a share in the property.
18. At the same time considering the frost relationship after divorce I find that it may not be efficacious unless by mutual understanding by both parties that they live together in the same house.
19. The Applicant at the same time cannot be allowed to suffer the use of his matrimonial home which based on the prima facie evidence on record he is entitled to occupy until this suit is determined. The court must therefore strike a balance.
20. The Applicant deponed that currently he is renting places to stay or is staying with friends despite having the said home. That fact was not disputed by the Respondent. The best way for now is to mitigate the Applicant's position by the Respondent paying out half of the rent to the application assuming that the matrimonial house would have been rented for their mutual benefit.
21. This position can as well apply to the Respondent if she decides to vacate the home and allow the Applicant to reside therein.
22. The prayer to access his personal belongings ought to be allowed seeing that the said documents are necessary for his daily living. In the event the Respondent becomes difficult to allow access then the Applicant shall have the option of using the law enforcement officers, that is the police.
23. As stated above the weighty issues of dividing the matrimonial properties shall await a full trial by way of viva voce evidence.
24. Consequently, I direct as follows:-
  - (a) An estate agent to be agreed on by the parties or each of the parties to appoint one separately shall within 14 days from the date herein assess the monthly current market rent of the premises situate at Maisonette No X, Hillside Court Upperhill.
  - (b) The Respondent shall pay half of the above assessed monthly rent to the Applicant by every 5<sup>th</sup> day of each month with effect from 5<sup>th</sup> August 2025 till the determination of this cause or until further orders of this court and in default the Applicant be at liberty to execute.
  - (c) Alternatively, and without prejudice the Respondent can vacate the said premises and allow the Applicant to occupy and the orders in (b) above shall apply mutatis mutandis.
  - (d) The Respondent shall within three days from the date herein allow the Applicant unlimited access to the said house to collect his personal belongings.
  - (e) In compliance with (d) above the Applicant may seek the services of the Officer Commanding Capitol Hill police station.
  - (f) The Originating Summons herein be fixed for hearing and determination forthwith,
  - (g) Costs shall await the outcome of the main suit.

**DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 17<sup>TH</sup> DAY OF JULY 2025.**

**H K CHEMITEI**

**JUDGE**



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