



**SNM v FJM & another (Matrimonial Cause E057 of 2024)
[2025] KEHC 11841 (KLR) (Family) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11841 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MATRIMONIAL CAUSE E057 OF 2024
CJ KENDAGOR, J
JULY 17, 2025**

BETWEEN

SNM PETITIONER

AND

FJM 1ST RESPONDENT

EAWM 2ND RESPONDENT

RULING

1. The Applicant sued the Respondents vide an Originating Summons (O.S.) dated 5th September, 2024 in which she seeks the following orders;
 - a. An order of Permanent injunction be and is hereby issued against the 1st and 2nd Respondents from evicting and/or denying the Applicant free access, use and quiet occupation of the Petitioner’s and 1st Respondent’s matrimonial home constructed on City Chicken - Share Certificate Plot Number 106 located within Kasarani Estate kwa Ngula Brescia Area.
 - b. The 1st and 2nd Respondents by Permanent injunction be restrained either by themselves or their agents and/or servants from selling, charging, or transferring or dealing in any manner Share certificate City Chicken Limited Plot 106 and 115, Plot Nyonia Giakwa share Certificate, Jericho Market Stall, Share Certificate Mwanamukia Plot 778 and Ireragia Rukuini Plot in Nyahururu as depicted in their resultant title deeds.
 - c. A declaration that properties Share Certificate City Chicken Limited Plot 106 and 115, Plot Nyonia Giakwa share Certificate, Jericho Market Stall, Share Certificate Mwanamukia Plot 778 and Ireragia Rukuini Plot in Nyahururu as depicted in their resultant title deeds were acquired during the subsistence of the marriage and therefore are matrimonial properties.



- d. A declaration that the Petitioner and the 1st Respondent are entitled to own half a share each of the matrimonial properties being Share Certificate City Chicken limited Plot 106 and 115, Plot Nyonia Giakwa share Certificate, Jericho Market Stall, Share Certificate Mwanamukia Plot 778 and Ireragia Rukuini Plot in Nyahururu as depicted in their resultant title deeds and that all the properties should be jointly registered in the names of the Petitioner and the 1st Respondent to assert their rights.
 - e. Any such orders as the court may deem fit in relation to safeguarding the Petitioner's matrimonial property rights.
 - f. That costs of the suit be provided for.
 2. Alongside the O.S, the Applicant brought the instant application dated the same day-5th September, 2024 seeking the following interim orders pending the hearing and determination of the O.S.
 - a. Spent.
 - b. Spent.
 - c. Spent.
 - d. Upon interparties hearing, an order of injunction be and is hereby issued against the 1st and 2nd Respondents from evicting and/or denying the Applicant free access, use and quiet occupation of the Petitioner's and 1st Respondent's matrimonial home constructed on City Chicken-Share Certificate Plot 106 located within Kasarani Estate Kwa Ngula Brescia Area pending the hearing and determination of the cause herein.
 - e. Upon interparties hearing the 1st and 2nd Respondents by injunction be restrained either by themselves or their agents and/or their agents and/or servants from selling, charging, or transferring or dealing in any manner Share Certificate City Chicken Limited Plot 106 and 115, Plot Nyonia Giakwa share Certificate, Jericho Market Stall, Share Certificate Mwanamukia Plot 778 and Ireragia Rukuini Plot in Nyahururu as depicted in their resultant title deeds, pending the hearing and determination of the cause herein.
 - f. That this honourable Court do make any further orders as it may deem fit and just to grant.
 - g. That costs of this Application be borne by the Respondents jointly.
 3. The grounds of the application were enumerated on its face and supported by the Applicant's affidavit sworn on 5th September, 2024. She stated she contracted a Christian Marriage with the 1st Respondent in 1986 and that their marriage is still subsisting. She stated that she acquired the suit properties solely but she developed them jointly with the 1st Respondent during the subsistence of their marriage. She claimed that the 1st Respondent has collaborated with the 2nd Respondent to forcefully deny her access and peaceful enjoyment of the alleged matrimonial properties and they have since moved in and occupied the matrimonial home.
 4. She claimed that the 2nd Respondent has no claim to the said properties because she did not contribute to their acquisition and their development. Instead, the Applicant averred that the said properties had already been acquired and developed by the time the 2nd Respondent came to cohabit with the 1st Respondent. She claimed that the Respondents have threatened to falsify ownership documentation in an attempt to fraudulently dispose the said matrimonial properties. She stated that unless the Court intervenes, she stands to lose her years of toil because the said properties are in danger of wanton destruction or sale to third parties.



5. The 1st Respondent filed a Replying affidavit sworn by him and dated 21st February, 2025. He stated that the Application lacks merit. He stated that he single handedly acquired the Title Plot No: 106 - City Chicken without the support or contribution of the Applicant. He averred that her marriage with the Applicant herein ended in year 1997 and no marriage exist between them and that if does exist, then it is only exists on paper. He stated that she should not be allowed to come to the house because that would interrupt and disrupt his peace and well-being at his residence as they parted ways back in 1997.
6. The 2nd Respondent filed a Replying affidavit sworn by her and dated 21st February, 2025. She stated that the application lacks merit. She averred that she has been cohabiting with the 1st Respondent as a husband and a wife since 2016 and that the Applicant's marriage to the 1st Respondent is only on paper. She claimed that she has contributed (jointly with the 1st Respondent) towards the development of the alleged matrimonial home over the years and that the 2nd Respondent has not contributed to the development of the said property. For these reasons, she stated that the Applicant should not be allowed to come and interfere in their matrimonial home.
7. The Application was canvassed by way of written submissions.

Applicant's Written Submissions

8. The Applicant submitted that she has met the threshold for injunctive relief. She argued that she has established she has a prima facie case with a probability of success, that she stands to suffer irreparable harm if the injunction is denied, and that the balance of convenience tilts in her favor. She argued that her marriage to the 1st Respondent is valid and she thus retains all rights under the Matrimonial Property Act, 2013. She argued that Nairobi/Block 122/19 - City Chicken located in Kasarani Estate is indisputably matrimonial property. Lastly, she argued that the law does not recognize the informal union and cohabitation between the Respondents and that the same is legally irrelevant to property rights.

Respondent's Written Submissions

9. The Respondents submitted that the Applicant should not be granted the prayers sought. They argued that the Applicant has not shown a prima facie case with a probability of success because she has not shown her contribution towards acquisition of any of the property she alleges are matrimonial properties. They also argued that the Applicant has not shown that she will suffer irreparable injury, which would not adequately be compensated by an award of damages. They argued that the Applicant has not been in actual occupation of the alleged properties and that any injury can be compensated by way of damages. Lastly, they argued that the balance of convenience tilts in their favor and more specifically in disallowing the Application.

Issues for Determination

10. I have carefully considered the Application, the various affidavits filed by the parties, and their respective submissions. I find that the singular issue that arises for disposal is whether the Applicant has met the threshold for grant of injunctive relief and the orders sought.
11. Courts have established the conditions that a party must satisfy for the Court to grant an interlocutory injunction. The leading authority on this area is *Giella vs Cassman Brown & Company Limited* [1973] E A 358, where the Court expressed itself in the following terms;

“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.”

12. The Court in *Paul Gitonga Wanjau v Gathuthi Tea Factory Company Ltd & 2 others* [2016] eKLR commented on the rule established in *Giella vs Cassman Brown* and expressed itself as follows;

The above principles were authoritatively captured in the famous Canadian case of *R. J. R. Macdonald Vs. Canada (Attorney General)* [3] where the three part test of granting an injunction were established as follows:-

- a. Is there a serious issue to be tried?;
- b. Will the applicant suffer irreparable harm if the injunction is not granted?;
- c. Which party will suffer the greater harm from granting or refusing the remedy pending a decision on the merits? (often called "balance of convenience").

13. The Court is being invited to look at the facts of this case and make a determination on whether the Applicant has met the three conditions established by case law and discussed above.

Whether the Applicant has established a Prima Facie case with probability of success

14. The first issue to evaluate is whether the Applicant has disclosed a prima facie case with a reasonable probability of success. Courts have also determined what constitutes a Prima Facie case in terms of the principle established in *Giella vs Cassman Brown*. In *Mrao Ltd Vs First American Bank of Kenya and 2 others* {2003} KLR125, the Court of Appeal described a Prima Facie case in the following terms;

“So what is a prima facie case? I would say that in civil cases it 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 as to call for an explanation or rebuttal from the latter.

Mr Wasuna, appeared to me to imply that the test as to whether or not a prima facie case had been made out is satisfied if the applicant is able to show the existence of an arguable case.

But as I earlier endeavoured to show, and I cited ample authority for it, a prima facie case is more than an arguable case. It is not sufficient to raise issues. 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. Similarly, the court in *Paul Gitonga Wanjau v Gathuthi Tea Factory Company Ltd & 2 others* [2016] eKLR, made the following observations concerning the establishment of a Prima Facie case;

“Steven Mason & McCathy Teraut in their well-researched article entitled "Interlocutory Injunctions: Practical Considerations" have authoritatively stated as follows:-

"With some exceptions, the first branch of the injunction test is a low threshold....."Once satisfied that the application is neither vexatious nor frivolous, the motions judge should proceed to consider the second and third tests, even if of the opinion that the plaintiff is unlikely to succeed at the trial. Justice Henegham of the Federal Court explained the review



as being "on the basis of common sense and a limited review of the case on the merits." It is usually a brief examination of the facts and law".

16. The Applicant claimed that she contracted a Christian marriage with the 1st Respondent in 1986 and produced a marriage certificate to prove the same. She also claimed that she acquired the alleged matrimonial property in 1991 and that she resided on it with the 1st Respondent and their children until 1997 when she left the country for the USA. She also attached WhatsApp chats allegedly with the 1st Respondent in which it seems they deliberated on how she will re-occupy the house. I have seen the said chats. In some of them, the 1st Respondent admits that the Applicant owns the matrimonial home, and asks her to give him one month to relocate his second family from the subject house.
17. I have read the 1st Respondent's replying affidavit to ascertain his response concerning the said WhatsApp chats. I have noticed that the 1st Respondent did not specifically comment on the said WhatsApp chats. He did not deny the authenticity of the WhatsApp chats in question.
18. The above is just a brief examination of the facts. It is a limited review of the merits of the case, based on the available materials. The Respondents are yet to file their response to the Originating Summons. However, this Court is satisfied that the application is neither vexatious nor frivolous.
19. In my view, and based on the materials available at this stage, the Applicant has established a prima facie case.

Whether the Applicant Will Suffer Irreparable Loss Which Would Not Be Adequately Compensated by an Award of Damages

20. I now turn to the second test for determination which is whether the Applicant will suffer irreparable loss if the injunction is not granted. The Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR gave guidance on how to determine whether an applicant is likely to suffer irreparable loss. The court held as follows;

“On the second factor, 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 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 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.”

21. This Court also associates itself with the reasoning of the Court in *Paul Gitonga Wanjau v Gathuthi Tea Factory Company Ltd & 2 others* [2016] eKLR, where the Court interrogated the same issue and held as follows;

“The second test for determination is whether the applicant will suffer irreparable loss. The following paragraph in Halsbury's Laws of England[14] is instructive. It reads:-

“It is the very first principle of injunction law that prima facie the court will not grant an injunction to restrain an actionable wrong for which damages are the proper remedy. Where the court interferes by way of an injunction to prevent an injury in respect of which there is a legal remedy, it does so upon two distinct grounds 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. Even where the injury is capable of compensation in damages an injunction may be granted, if the act in respect of which relief is sought is likely to destroy the subject matter in question”

22. The Applicant claimed that the Respondents are likely to sell, charge, or transfer the subject properties to third parties in a bid to frustrate her. She claimed that the Respondents have through dubious means colluded to convert ownership documents to capture the sole names of the 1st Respondent in an effort to sell the properties. She averred that she has reported the matter with the police under OB. Number 30/2/08/2024. I have seen a statement allegedly written by the 1st Respondent with the police, in which the 1st Respondent submitted several ownership documents and share certificates relating to some of the properties.
23. I have carefully looked at the evidence on record to assess whether the Applicant stands to suffer irreparable harm if the temporary injunction is not granted. I note that the Applicant does not live on the suit property, although she has explained how she left and questions the manner in which she has been denied re-entry. I also note that, according to the 1st Respondent’s statement, the property in Kiangai/730 is registered under the name of the Applicant, Plot No. 106 is registered in their joint names with the 1st Respondent while others are allegedly in her names. I also appreciate that this court could not, at this stage, confirm the ownership status of some of the properties listed in the Application.
24. Based on this analysis, this Court is in doubt as to whether the Applicant is likely to suffer irreparable loss or harm if the injunction is not granted.

In Whose Favour Does The Balance Of Convenience Tilt In?

25. I now turn to the third test for determination. The question under this limb is to determine which party will suffer the greater harm from granting or refusing the remedy pending a decision on the merits. It is also known as balance of convenience. This question is usually answered by determining whether the balance of convenience lies in favour of granting or refusing the application.
26. Courts have established that this third limb comes into play where the Court is in doubt on whether the Applicant is likely to suffer irreparable loss. This rule was recently applied in *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR, where the Court of Appeal held as follows;

“..It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or both that the question of balance of convenience would arise. The inconvenience to the applicant if interlocutory injunction is refused would be balanced and compared with that of the respondent, if it is granted.”
27. The Applicant seeks to prevent the Respondents from denying her free access, use, and quiet occupation of the house in City Chicken Plot No.106 pending the hearing and determination of the cause herein. The Applicant annexed a Court Order dated 24th July, 2024 issued in MCCHCC/E1374/2024 in which the Court restrained the 1st Respondent from removing the 2nd Respondent and her children from the house constructed on City Chicken- Share Certificate Plot 106 located within Kasarani Estate. There was no evidence whether this particular order has been vacated by the Courts.



- 28. In the absence of clarity on this issue, this Court presumes that the said Court Order dated 24th July, 2024, remains in force. Therefore, I find that this Court cannot grant Prayer (d) sought in the Application without causing an apparent conflict with the existing order, which concerns the same suit property at the interlocutory stage.
- 29. In my view, the most appropriate course of action in the circumstances of this case is to hear and determine the Originating Summons expeditiously.

Disposition

- 30. These are the final orders of the Court;
 - a. The Applicant’s Application dated 5th September, 2024 is hereby dismissed with no order as to costs.
 - b. The Applicant’s Originating Summons dated 5th September, 2024 shall be heard on a priority basis.
- 31. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 17TH DAY OF JULY, 2025.

.....

C. KENDAGOR

JUDGE

In the presence of:
Mr. Simiyu, Advocate for Applicant
Mr. Mugo, Advocate for Applicants

