



**CMK v GWI (Matrimonial Cause E094 of 2023)
[2025] KEHC 12763 (KLR) (Family) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12763 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MATRIMONIAL CAUSE E094 OF 2023
HK CHEMITEI, J
SEPTEMBER 18, 2025**

BETWEEN

CMK APPLICANT

AND

GWJ RESPONDENT

RULING

1. In his application dated 7th December 2023 the Applicant seeks the following orders:-
 - (a) That pending the determination of the suit and in particular the prayers herein an order does issue appointing a reputable estate management agent/ receiver to take charge, manage and collect all rents collectable from the buildings being on the suit lands and taking account the outgoings deposit the net thereof into court or into a joint interest earning account to be opened as this honorable court may direct.
 - (b) That pending the determination of the suit this court do issue preservation orders in respect of the suit properties to the effect that the Respondent or her agents, servants or anybody claiming under or through the Respondent should not sell, charge transfer and or in any way whatsoever alienate the suit properties namely title No's Nairobi/Block 97/147 and Nairobi Block 83/14/484.
 - (c) That pending the hearing and determination of the suit an order does issue directing that the upkeep of the three minors' education be drawn from the rental proceeds of the properties that are the subject of this suits.
2. The application is based on the grounds thereof and the sworn affidavit of the Applicant dated the same date.



3. The Respondent has equally opposed the application vide her replying affidavit sworn on 13th November 2024.
4. The issues as raised by the Applicant in his supporting affidavit are not difficult to appreciate.
5. The Applicant and the Respondent were husband and wife and because of irreconcilable differences they filed for divorce. In their union they were blessed with three children.
6. Further the Applicant and the Respondent were involved in child custody case number E1310 of 2021 where the court finalised and issued a decree spelling out how the children were to be maintained by the two.
7. The Applicant deponed that during their coverture they purchased and developed several properties namely, Nairobi Block 83/14/484 (Umoja) Nairobi block 97/147 (Tassia) Nairobi Block 97/1778 (Fesha), motor vehicle KAZ 673 F and Britam Education Fund.
8. It is his case that the Respondent was collecting rent amounting to Kshs 1,182,000 from Nairobi Block 97/147 and Nairobi Block 83/14/484 which she utilizes alone.
9. It is therefore his prayer that the above properties ought to be preserved as the Respondent was likely to dispose them to his detriment now that the suit was still pending.
10. It is his case also that he has participated in the acquisition of the property and for that matter the same must be preserved for their interest and the children whom he claimed the Respondent has failed to maintain them as per the orders from the children's court.
11. On her part the Respondent vide her replying affidavit extensively opposed the application. She denied that there was such a marriage between her and the Applicant although they have the three children.
12. She said that the company namely Guil Contractors and General Supplies Limited was her own initiative even before her union with the Applicant and that he conveniently allowed the Applicant to have 10% of the shareholding which he later voluntarily surrendered or transferred back
13. That the properties in question were solely developed and she exhibited various applications for approval under her name.
14. She deponed that the account cited by the Applicant was basically a domestic account which she withdrew money for that use and not for construction purposes.
15. She went on to state that the only property which she acquired with the Applicant were Nairobi Block 97/1778 and motor vehicle registration number KAZ 673F. These are the two properties which ought according to her to be subjected to a division.
16. The court subsequently directed the parties to file written submissions which they complied and I have had the occasion to peruse the same as well as the cited authorities.
17. I think the simple issue in my view is whether the Applicant shall suffer any prejudice or loss if the application is not allowed. It is of course too early to determine the veracity or otherwise of the issues raised concerning whether the properties in question form matrimonial property.
18. On the face of it I have not been shown any decree from the divorce court by either of the parties. What has been exhibited is a letter dated 19th October 2023 by the Applicant to the effect that they were married customarily on 8th August 2020. The same is from one Wamboka Okeke the area chief Umoja location.



19. There is therefore need to consider this fact in light of what the Act calls matrimonial property. In other words, in the absence of a decree of divorce can it be said that there was a marriage between the two and therefore the assets acquired formed matrimonial property?
20. More significantly is the question of company law viz a viz Guil Contractors and General Supplies Limited. Does the law governing matrimonial property apply or is it Cap 486?
21. I have perused the evidence from both side and I do not think for now it is easy to conclude that the properties registered in the Respondent's name on the face of it constitute matrimonial property. Serious oral evidence on oath must be undertaken and cross examination done to ascertain these facts.
22. The issue raised above concerning the company whether the Applicant is a shareholder or not can be dealt with at the commercial division of this court. That court can issue relevant orders in favour of the parties.
23. The Applicant also raised the issue of the children, namely that the rent collected from the premises can go towards the support and maintenance of the children.
24. I think as rightly submitted by the Respondent, the same ought to be argued at the children's court. Already there appears to be serious litigations ongoing including notice to show cause in that court. The best forum therefore is to move to the said court which has the competent jurisdiction.
25. In a nutshell therefore I do not find merit in the application. The best approach is to have the matter heard conclusively and a judgement fully delivered.
26. Meanwhile all that this court can do now is to preserve the properties from disposal or in any way dealt with adversely by the parties while this suit is pending. This shall give sufficient opportunity to both parties to fast track the matter and have it resolved expeditiously.
27. The issue concerning Britam Education Fund it appears was litigated at the Children's court and I do not think for now much can be said about it.
28. Consequently, the court orders that:-
SUBPARA (a)
The application is disallowed.
SUBPARA (b)
There be preservation pending the hearing and determination of this cause of all those properties namely Nairobi Block 97/147, Nairobi Block 83/14/ 484, Nairobi Block 97/1778 and motor vehicle registration number KAZ 673F.
SUBPARA (c)
Costs shall await the outcome of the cause.

DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS

18TH DAY OF SEPTEMBER 2025.

H K CHEMITEI

JUDGE

