



FWK v BGM (Civil Suit E014 of 2024) [2025] KEHC 12992 (KLR) (22 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12992 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL SUIT E014 OF 2024
TW OUYA, J
SEPTEMBER 22, 2025
IN THE MATTER OF MATRIMONIAL PROPERTY ACT 2013
AND
IN THE MATTER OF THE LAND REGISTRATION ACT 2012 FWK

BETWEEN

FWK APPLICANT

AND

BGM RESPONDENT

RULING

1. The Notice of Motion Application before the Court dated 21st June 2024 was brought under Certificate of Urgency and is expressed to be anchored under Order 51 and Order 40 Rule 1 of the Civil Procedure Rules as read together with Sections 1A, 1B and 3A of the *Civil Procedure Act*, the Applicant is seeking the following Orders as against the Respondent:
 - i. (1) Spent.
 - ii. (2) That pending the hearing and determination of this application, the Honourable Court be pleased do issue an order restraining the Respondent whether by himself or his representatives, servants, agents his agents and/or servants from entering, selling, leasing, encroaching and/or trespassing, interfering, wasting, constructing further/or dealing in whatsoever manner with or otherwise dealing with land parcel Ruiru Kiu Block 2/17329 together with the house and any other household items thereon.
 - iii. (3) That the Honourable Court be pleased to direct the Land Registrar Ruiru to place a caution on the said property pending the hearing and determination of this application.
 - iv. (4) That pending the hearing and determination of this application, the Honourable Court be pleased do issue an order restraining the Respondent whether by himself or his representatives,



servants, agents his agents and/or servants from entering, selling, leasing, encroaching and/or trespassing, interfering, wasting, constructing further/or dealing in whatsoever manner with or otherwise dealing with land parcel Kijabe/Kijabe Block 1/11219 and Land parcel Kijabe/Kijabe Block 1/6364 and 6365 which form part of matrimonial property.

- v. (5) That pending the hearing and determination of the main suit, the Honourable Court be pleased do issue an order restraining the Respondent whether by himself or his representatives, servants, agents his agents and/or servants from entering, selling, leasing, encroaching and/or trespassing, interfering, wasting, constructing further/or dealing in whatsoever manner with or otherwise dealing with land parcel Ruiru Kiu Block 2/17329 together with the house and any other household items thereon.
 - vi. (6) That the Honourable Court be pleased to direct the Land Registrar Ruiru to place a caution on the said property pending the hearing and determination of the matrimonial case suit.
 - vii. (7) That pending the hearing and determination of the main suit, the Honourable Court be pleased do issue an order restraining the Respondent whether by himself or his representatives, servants, agents his agents and/or servants from entering, selling, leasing, encroaching and/or trespassing, interfering, wasting, constructing further/or dealing in whatsoever manner with or otherwise dealing with land parcel Kijabe/Kijabe Block 1/11219 and Land parcel Kijabe/Kijabe Block 1/6364 and 6365 which form part of matrimonial property.
 - viii. (8) That the costs of this Application be borne by the Respondent.”
2. The suit is supported by the grounds set out at the foot thereof as well as in the Affidavit sworn by FWK (the applicant herein) on 21st June 2024. The Applicant’s case is that she contracted a marriage with the Respondent on 29th April 2017 as per the annexed certificate of marriage marked “FWK-1” and the marriage was blessed with two issues as per the annexed birth certificates marked “FWK-2 and FWK-3”. The Applicant further averred that the aforesaid marriage was dissolved through the Order of the Court on 12th January 2024 as per the attached decree nisi marked “FWK-4.
 3. The Applicant subscribed to the position that land parcel number Ruiru Kiu Block 2/17329 forms part of her matrimonial property having been acquired during the subsistence of the marriage between the Respondent and herself. Furthermore, the Applicant has been residing in the house erected on land parcel number Ruiru Kiu Block 2/17329 together with her children since the aforesaid property was purchased.
 4. The Applicant averred that the Respondent concealed from her his intention to dispose the house situated on land parcel number Ruiru Kiu Block 2/17329 together with the household items therein and she only found out about the intended sale through social media.
 5. She further averred land parcel numbers Kijabe/Kijabe Block 1/11219 and land parcel Kijabe/Kijabe Block 1/6364 and 6365 also form part of her matrimonial property, therefore, the Respondent cannot dispose the same without her consent. She urged the Court to grant the reliefs sought as she stands to suffer irreparable loss and damage if the Respondent is not restrained from disposing her matrimonial property.
 6. The Respondent resisted the suit through his Replying Affidavit dated 22nd July 2024. While admitting that he contracted a marriage with the Applicant on 29th April 2017, the Respondent averred that the said union broke down around April 2023 when the Applicant vacated their home after being



caught having an affair. Thereafter, the Respondent filed for divorce on 15th June 2023 and the divorce proceedings were concluded on 12th January 2024.

7. The Respondent averred that at all times during the lifetime of his marriage to the Applicant, she was a stay-at-home wife and mother who never engaged in any sort of business as claimed, apart from the businesses owned Respondent which he authorized the Applicant to operate; however, the Applicant mismanaged the same hence no returns were generated therefrom.
8. Furthermore, the Applicant never acquired any article of property together with the Respondent during the pendency of their marriage and the Applicant is seeking to reap where she has not sown. That land parcel Kijabe/Kijabe Block 1/11219 registered in the names of the Applicant and the Respondent was a gift from the Applicant's father and the Respondent relinquished any claim to the same.
9. The Respondent annexed to his Replying Affidavit dated 22nd July 2024, a copy of a Loan Agreement dated 3rd February 2020 executed between himself and KJW (the Lender) wherein it is stated that the latter advanced Ksh.6 million to the Respondent repayable in monthly instalments of Ksh.150 thousand and also through "promotion advertisements" between years 2020 and 2023 until payment in full. The foregoing Loan Agreement, clearly stipulates that Respondent shall turn in the original title deed for land parcel number Ruiru Kiu Block 2/17329 to the Lender to retain as security until the Respondent has fully offset the aforesaid loan.
10. The Respondent further attached a Sale Agreement dated 28th July 2021 executed between MNK being the Vendor of land parcel number Ruiru Kiu Block 2/17329 and the Respondent as the Purchaser thereof for the entire consideration of Ksh.1.8 million.
11. The suit was dispensed by way of written submissions. The Applicant filed written submissions dated 12th November 2024 through her counsel and identified a single issue for determination by the Court namely, whether the Applicant has met the threshold for grant of the Order sought in the application.
12. The Applicant submitted that she is entitled to the grant of the injunctive prayers sought according to the criteria set out by the Court in case of *Giella v Cassman Brown & Co. Ltd (1973) E.A 358*. Further reliance was placed in the holding of the Court in the case of *Naftali Ruth Kinyua V Patrick Thuita Gachure & Another [2015] eKLR*; *Vivo Energy Kenya Limited V Maloba Petrol Station Limited & 3 Others [2015] eKLR*; *Kenleb Cons Ltd V New Gatitu Service Station Ltd & Another {1990} K.L.R. 557*; *Ngurman Limited V Jan Bonde Nielsen & 2 Others [2014] eKLR*; *Airland Tours & Travel Limited V National Industrial Credit Bank Nairobi Milimani HCCC No. 1234 of 2002*; *Esso Kenya Limited V Mark Makwata Okiya Civil Appeal No. 69 of 1991*.
13. The Applicant argued that the Respondent failed to present any evidence in support of his claim of having taken out a loan of Kshs. 6 million to purchase land parcel number Ruiru Kiu Block 2/17329, which the Applicant claims forms part of her matrimonial property. She further submitted that the Respondent failed to furnish any evidence before the Court demonstrating that he has been paying off the aforesaid loan through instalments.
14. The Applicant subscribed to the position that at the interlocutory stage, the Court is not required to look at the contribution of each party herein towards the acquisition of matrimonial property.
15. The Respondent filed written submissions dated 26th December 2024 through his counsel and isolated the following issue for resolution by the Court: whether the Applicant entitled to the Orders prayed for.



16. It was submitted that the applicant failed to attach any evidence demonstrating her contribution towards the acquisition of land parcel number Ruiru Kiu Block 2/17329, including any non-monetary contribution. Furthermore, during the lifetime of their marriage between 2017 and 2024, the Applicant and the Respondent used to live in a rented house as distinguished from the house situated on land parcel number Ruiru Kiu Block 2/17329.
17. That the Respondent is currently unemployed, which fact is well-known to the Applicant, who has brought the instant suit with malice in order to punish the Respondent who stands to lose his investment being the house located on land parcel number Ruiru Kiu Block 2/17329 to a forced sale by his creditors.
18. Guidance was placed in the reasoning of the Court in the cases of: *HKG v Kanjoya Enterprises Ltd & Another* [2022] eKLR; *PKK Vs FKT* (2018) eKLR, to buttress the argument that the Applicant does not stand to suffer irreparable loss in the event the reliefs sought are not granted as she is currently living and working abroad, in the United Kingdom (UK), with her new family. The Respondent annexed email print-outs evidencing the Applicant's relocation to the UK. Furthermore, the Respondent is a job-less former radio presenter who cannot be expected to raise the sum of Ksh. 10 million being demanded by his creditors unless he disposes land parcel number Ruiru Kiu Block 2/17329 including the developments thereon.
19. Upon careful perusal of the pleadings, the totality of the evidence and the rival submissions of the parties to the subject suit, the Court identified the following issue for determination:

Whether the Applicant is entitled to the injunctive reliefs sought?

20. On whether the Applicant is entitled to the grant of the injunctive reliefs sought, the law governing the issuance of interlocutory orders is primarily contained in the well-known case of *Giella v. Cassman Brown* [1973] E.A. 358, where the Court ruled that:

“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”
21. The Respondent admitted that land parcel Kijabe/Kijabe Block 1/11219 registered in the names of the Applicant and the Respondent was a gift from the Applicant's father, and he did not any lay claim to the same.
22. The Applicant urged the Court not to enquire into the mode of acquisition of the contested properties in the current suit, because it is not necessary to do so at the interlocutory stage. The Respondent, for his part, contended and submitted that land parcel number Ruiru Kiu Block 2/17329 is in danger of being disposed by the Creditor pursuant to the terms of the Loan Agreement dated 3rd February 2020.
23. Upon careful perusal of the reliefs sought in the instant suit, it is evident that the dispute between the parties herein concerns alleged matrimonial property, namely, land parcel number Ruiru Kiu Block 2/17329 (the subject property). The Respondent having relinquished any claim over land parcel Kijabe/Kijabe Block 1/11219, the only other articles of property contested by the parties apart from the suit property are land parcels Kijabe/Kijabe Block 1/6364 and 6365.



24. Section 17 of the *Matrimonial Property Act* provides as follows:

- “(1) A person may apply to a court for declaration of rights to any property that is contested between that person and a spouse.
- (2) An application under subsection (1) –
- (a) shall be made in accordance with such procedure as may be prescribed;
 - (b) may be made notwithstanding that a petition has not been filed under any law relating to matrimonial causes.”

25. The Court of Appeal in the case of *AKK v PKW* [2020] KECA 335 (KLR), underscored the meaning and import of Section 17 of the *Matrimonial Property Act* as follows:

“A plain reading of Section 17 enables a spouse, subsistence of a marriage notwithstanding, to make an application for declaratory orders. It further states that that application may be made as part of a petition in a matrimonial cause and notwithstanding that a petition has not been filed under any law relating to matrimonial causes. It is our opinion that the divorce cause does not prevent a party from bringing an action for declaration of rights to property in the High Court under Section 17 of the Act.”

26. From the foregoing, it is clear that in order for the provisions of Section 17 of the *Matrimonial Property Act* to be invoked, there must be a contest between a person and their spouse; or, former spouse, as in the present cause.

27. In the suit before the Court, the Applicant has not sought a declaration of rights over the alleged matrimonial home or, the other properties to which she has laid claim. Further, the instant suit is not expressed to be anchored under Section 17 of the *Matrimonial Property Act*, or any other provision of the same law. There is only a mere reference to the citation of the *Matrimonial Property Act* in the instant cause.

28. Be that as it may, the Court has anxiously sought to locate the main suit upon which the subject application is pegged, without success. It is clear that there is no Originating Summons or Chamber Summons filed by the Applicant laying claim to the suit property or the other contested properties. What is before the Court is only the Notice of motion Application dated 21st June 2024. In the premises, it is evident that the Applicant is not suited. Accordingly, the Court holds and finds that the subject suit is incompetent

29. The Court shall proceed to issue the following Final Orders:

- i. The instant suit is found unmerited and is hereby dismissed entirely.
- ii. The Applicant to bear the Respondent’s costs.

DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 22ND SEPTEMBER, 2025.

HON. T. W. OUYA

JUDGE

