



REPUBLIC OF KENYA



**Mwangoo v Mwanyumba (Civil Appeal E032 of 2021)  
[2024] KEHC 3092 (KLR) (14 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3092 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CIVIL APPEAL E032 OF 2021  
GMA DULU, J  
MARCH 14, 2024**

**BETWEEN**

**EMMANUEL MWANYUMBA MWANGOO ..... APPELLANT**

**AND**

**MERCY NJERI MWANYUMBA ..... RESPONDENT**

**RULING**

1. Before me is an application dated 20<sup>th</sup> September 2023 filed by Mercy Njeri Mwanyumba by way of Notice of Motion under Section 1A, 1B, 3, 3A & 80 of the Civil Procedure Act (Cap.21), and Order 45 and 50 of the Civil Procedure Rules as well as Article 159 of the Constitution of Kenya.
2. The prayers in the application are as follows:-
  1. (Spent).
  2. That the court be pleased to issue orders for temporary injunction restraining and/or stopping the respondent in person or his servants or agents or any representatives from harassing, evicting or entering or dealing in any way with the matrimonial home pending judgment in the Voi High Court Appeal No. E032 of 2022 Emmanuel Mwanyumba Mwangoo v Mercy Njeri Mwanyumba.
  3. Costs of the application be provided for.
3. The application has grounds on the face of the Notice of Motion that the applicant and respondent had been husband and wife and were now divorced; that after receipt of the decree nisi in Voi CMCC No. E008 of 2022 the respondent wanted to evict the applicant from the matrimonial home; that the respondent had now filed Voi HC Civil Appeal No. E032 of 2022 and then went and switched off the electricity supply from the matrimonial home; that he locked the house denying the applicant access thereto; that the matter had been reported to OCS Mwakitau Police Station and the respondent



summoned whereat he admitted hiring 2 young men to walk around the compound; and that the applicant is thus apprehensive for her life.

4. The application was filed with a supporting affidavit sworn by the applicant on 20<sup>th</sup> September 2023 amplifying the grounds of the application. A copy of the Magistrate court judgment is annexed to the affidavit.
5. When the matter came before me *ex parte*, I issued interim orders to which the respondents filed a Notice of Motion dated 11<sup>th</sup> October 2023 for this court to review its orders, which application has in my view been dealt with through orders already issued by this court.
6. The application has been opposed through a replying affidavit sworn on 6<sup>th</sup> November 2023 by the respondent Emmanuel Mwanyumba Mwangoo in which the decree absolute is annexed. It was deponed that the respondent was dissatisfied with the decision of A. M. Obura (CM) and had filed the present appeal; that the temporary orders granted were for 6 months only; and that more than 8 months had lapsed and the applicant had not filed a cross-appeal; and that it was not true that he tried to evict the applicant from the house or switched off the KPLC power connection; or locked the house or hired two young men to destroy the fence and trees; and that the protection granted to the applicant by A. M. Obura (CM) had now lapsed.
7. The respondent Emmanuel Mwanyumba Mwangoo also filed an affidavit sworn by Simon Mwakio Mwangemi on 6<sup>th</sup> November 2023; and in addition his own affidavit sworn on 6<sup>th</sup> November 2023.
8. The applicant Mercy Njeri Mwanyumba filed a further affidavit she swore on 27<sup>th</sup> November 2023 in response to the affidavit of Emmanuel Mwanyumba Mwangoo sworn on 6<sup>th</sup> November 2023.
9. Though Emmanuel Mwanyumba was represented by Counsel Machora Motuka & Company Advocates, no written submissions were filed by either party.
10. This is an application for interim or interlocutory court orders pending appeal. Indeed, the respondent in the application Emmanuel Mwanyumba Wangoo has filed an appeal in this court which is pending, in this matrimonial matter.
11. It is also clear from the Magistrate's court orders that interlocutory injunctive orders were granted in the judgment of the Magistrate's court in the following terms:-

“Consequently, I hereby enter judgment in favour of the plaintiff as against the defendant, as follows:-

- a. The defendant, by himself, servants, or agents or any representative is hereby restrained from evicting or removing, chasing, or threatening and harassing the plaintiff from the matrimonial house herein situate at Bura Murugua within Taita Taveta County for a period of six (6) months pending determination of the issue of matrimonial property herein.
- b. The OCS Mwakitau Police Post is directed to ensure compliance with this order to prevent any breach of the peace.
- c. The parties are encouraged to pursue an amicable solution with regard to distribution of matrimonial property through mediation.
- d. Each party shall bear their costs of this suit. It is so ordered.”



12. The above orders having been issued by the trial court on 8<sup>th</sup> July 2022 have definitely lapsed with regard to the order issued against eviction. This court has however already issued further orders on the same element in the interest of justice.
13. I note that the trial court's order for pursuing an amicable resolution by the parties on distribution of matrimonial property is still alive, and the restraining orders against eviction also refers to distribution of the same matrimonial property.
14. I have considered that I have not been told by either party what efforts have so far been made to determine distribution of the matrimonial property or whether there has been any effort made to resolve the issue of distribution of matrimonial property.
15. In the meantime, the applicant herein Mercy Njeri Mwanyumba holds a judgment in her favour, and the losing party Emmanuel Mwanyumba Mwangoo not satisfied with the decision of the trial court, has filed the present appeal, which is his right, and the said appeal is pending.
16. In those circumstances, and taking into account the conflicting interests of the parties, and applying the principles stated in the case of *Giella v Cassman Brown Ltd* (1968) EA 358 on interlocutory injunction, I find that in order to avoid injustice to any of the contesting parties in this litigation wherein there is already a pending appeal, the restraining orders granted by the trial court, have to be reinstated and extended upto the determination of appeal.
17. I thus allow the application dated 20<sup>th</sup> September 2023 filed by Mercy Njeri Mwanyumba and order as follows:-
  - a. I issue orders for temporary injunction restraining and/or stopping the respondent (Emmanuel Mwanyumba Mwangoo) in person or his servants or agents or any representatives from harassing, evicting the applicant from the matrimonial home pending the judgment in Voi High Court Civil Appeal Number E032 of 2022 – Emmanuel Mwanyumba Mwangoo v Mercy Njeri Mwanyumba.
  - b. The OCS Mwakitau Police Post is directed to ensure compliance with the above order until delivery of judgment in the appeal herein.
  - c. The costs of this application will abide the outcome of the appeal.

**DATED, SIGNED AND DELIVERED THIS 14<sup>TH</sup> DAY OF MARCH 2024 IN OPEN COURT AT VOI.**

**GEORGE DULU**

**JUDGE**

**In the presence of:-**

Alfred/Trizah – Court Assistants

Applicant

Mr. Motuka for respondent

