



**LWK v CMN (Matrimonial Cause E011 of 2024)
[2024] KEHC 8606 (KLR) (15 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8606 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MATRIMONIAL CAUSE E011 OF 2024
DO CHEPKWONY, J**

JULY 15, 2024

**IN THE MATTER OF SECTION 2, 6, 7 AND 17 OF THE
MATRIMONIAL PROPERTY ACT NO. 49 OF 2013**

BETWEEN

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LWK PLAINTIFF

AND

CMN DEFENDANT

RULING

1. What is before this court for determination is the Amended Notice of Motion application dated 19th May, 2024 and it seeks the following orders:-
 - a. Spent.
 - b. That pending the hearing and determination of this cause an order issued for restoration temporary injunction restraining the Defendant from selling, offering for sale, charging, leasing, transferring or otherwise dealing with the suit premises Ruiru Mugutha 1/1XX7, Nairobi/Block 82/2XX6, Ruiru Block Mugutha Block /T1XX0, Kirinyaga/Ndia/[Particulars Withheld] Property.
 - c. That the Honourable Court be pleased to order and compel the Respondent to produce documents relating to Kirinyaga/ Ndia/[Particulars Withheld] Property to enable for distribution as matrimonial property.
 - d. That the Chief Land Registrars, Ruiru Lands Office, Nairobi Land Office and Kirinyaga Land Office put restrictions, caution or caveat on the suit premises pending hearing and determination of the cause.



- e. That pending the hearing and determination of this cause, the Honourable Court be pleased to order the respondent to hand over the management and control of the property known as Ruiru/mugutha Block 1/T.1XX0 to the Applicant to enable her collect rent to maintain the children of marriage.
 - f. That an order do issue compelling the Respondent to allow the Applicant access to her personal properties and item including clothes, certificates and other documents and enable pick such items for personal use.
 - g. That the Honourable Court be pleased to issue a restraining order against the Respondent from harassing, contacting, coming close (within 50 meters), intimidating the Petitioner and from posting, communicating, sharing information about the Petitioner on Facebook and other social media platforms, mobile phones about the Petitioner pending the hearing and determination of this application cause.
 - h. That the Officer- in-Charge of Station Post at Savana Post and the Land Registrars named at Paragraph 3 above to enforce compliance of those orders.
 - i. That the costs of this application be provided for.
2. The application is based on the grounds as set out in its face and the Supporting Affidavit of LWK sworn on 30th April, 2024, wherein the Applicant states that she was married in a Christian Marriage to the Respondent on 2nd March, 2002 at the Bible Fellowship Church, [Particulars Withheld]-Maragua in Murang'a and they proceeded to cohabit in various places including Nairobi/Block 82/2XX6, Greenfield [Particulars Withheld], Nairobi whereby they were blessed with three(3) issues namely; TNM, GNM and MM. That the marriage was dissolved through Nairobi Divorce Cause No.E359 of 2023 on 27th January, 2023 after the Respondent violently chased her from the house and a decree absolute issued on 20th September, 2023. It is the Applicant's position that she got custody of the children and the Respondent does not support them in any way.
 3. The Applicant contends that before marriage, she was in the business of selling new clothes from Eastleigh and with that income and savings, she managed to buy a parcel of land known as Ruiru/Mugutha Block 1/T.1XX0 which she paid on her own and consequently built residential and commercial building on it without any contribution from the Respondent. According to the Applicant, this is not matrimonial property but the Respondent has forcefully and falsely controlled and collected rent from the units.
 4. Further, it is the Applicant's case that she and the Respondent also incorporated a Company called [Particulars Withheld] Limited whose business was clearing and forwarding. And during the subsistence of the marriage, they purchased a matrimonial home in Donholm [Particulars Withheld] in Nairobi and obtained a mortgage for the purchase of Nairobi Block 85/2XX6, which loan she directly contributed to its repayment in full and the property was discharged by the financier, Housing Finance of Kenya, thus this property amounts to matrimonial property.
 5. With respect to Kirinyaga/Ndia/[Particulars Withheld] property, the Applicant avers that it is registered in both her name and that of the Respondent, hence it is matrimonial property but he has withheld the documents for production in this suit. According to the Applicant, since it is used for tea farming, the same should be used for the benefit of herself and the children. The Applicant maintains that this property and that of Ruiru/[Particulars Withheld] are matrimonial properties as they were acquired by their joint contributions and proceeds from the Company and business.



6. Finally, it is the Applicant's contention that the Respondent is a violent and abusive man who has on several occasions, physically attacked, assaulted and verbally abused her which actions have and she has continued even after the divorce and she has attached several OB reports. She states that the Respondent sends her threatening and defamatory messages on her mobile phone, whatsapp and posts on facebook. The Applicant holds that she has been maintaining their three children by paying their school fees and upkeep, which the Respondent has refused to contribute to despite falsely collecting rental income from her property.
7. The Applicant has urged the court to issue orders compelling the Respondent to give up the rental income and maintain the children. She has also urged the court to issue injunctive orders as she is apprehensive that the Respondent will sell and dispose of the property through forgery. She has further urged the court to take into account her contribution, both direct and indirect in the determination of each party's entitlement towards the share of the matrimonial property.
8. The Respondent was served with the pleadings alongside mention date for highlighting of submissions as confirmed by the Affidavit of Service sworn on 13th May, 2024.

Analysis and Determination

9. Having read through the Supporting Affidavit sworn by the Applicant and perused the annexures attached thereto in support of her application, the court notes that the Applicant is seeking various orders which can be summarized into one issue being whether the Applicant is entitled to being grant the following orders as sought:-
 - a. Injunctive orders .
 - b. Restraint orders.
 - c. Children' maintenance orders.
 - d. Production of documents Orders.
10. On injunctive orders, it is the Applicant's argument that she is apprehensive that the Respondent may sell, lease, charge, transfer or in any other way dispose off the properties namely Ruiru/ Mugutha 1/1XX7, Nairobi/Block 82/2XX6, Ruiru Block Mugutha Block/T.1XX0, Kirinyaga/ Ndia/[Particulars Withheld] property. It is trite that for an order of temporary injunction to issue, the three conditions must be satisfied as set out in the case of Giella –vs- Cassman Brown [1973]E.A 358 that the Applicant has a prima facie case with a probability of success; that the Applicant shall suffer irreparable injury which cannot be compensated by damages; and if the court is in doubt then it can decide the application on a balance of convenience.
11. The Applicant's prayer for injunction is based on her interest in the suit property as a former spouse to the Respondent and a joint and or sole owner to the said property together with the intent to secure the childrens' interest. This can only be realized after the court has established whether the suit properties are indeed matrimonial properties or not. Therefore, at this interlocutory stage, the court cannot issue or direct the Land Registrar of Ruiru or Nairobi to place restrictions, caution or caveat on these properties until such time that the parties will have been and the suits determined through presentation of evidence.
12. However, upon reading through the Supporting Affidavit evidence and submissions which has not been challenged, this Court finds that the Applicant has demonstrated that she has a prima facie case in respect of the said suit properties and she stands to suffer irreparable loss in the event that they are sold



and or interfered with in anyway. It is therefore only prudent that the properties be preserved pending the hearing and determination of the main cause.

13. On seeing restraint orders to issue upon the Respondent, the Applicant claims that the main reason for their separation and subsequent divorce on 27th February, 2023, was the violent and abusive nature of the Respondent, whereby he would always attack and assault her. According to the Applicant, the Respondent has continued to insult, abuse and threaten to kill her even after the divorce and has attached copy of Occurrence Book No.16/20/06/2XX1, to confirm this. The Applicant has also attached Facebook and Whatsapp and Mpesa messages to confirm this. I have perused through the said Occurrence Book extracts and Whatsapp messages and find that the same do not bear the name of the Respondent, thus it is difficult to determine that they involve him. It is only a letter from the Assistant Chief of Savannah Location dated 16th February, 2022 in which a note at the bottom states:-

“Lilies is not allowed in my place and I am not allowed in her place vice versa”.

14. In view of this, for the Applicant to be granted the order to access the Respondent’s so she can access her personal properties such as clothes, certificates and other documents cannot be granted until the parties are heard and determined on merit.

15. With regard to child maintenance orders, it is the Applicant’s case that after their divorce, she left the matrimonial home with the three children who are now under her custody and yet the Respondent has continued with the tenants and excluded her from obtaining rent or any income from all the properties including the one registered in her name. She also says that despite all these, the Respondent has refused, ignored and or neglected to support or maintain the children. She is seeking orders to compel the Respondent to pay school fees and maintain or provide upkeep for their children. It is this Court’s finding that this court does not have jurisdiction to issue such orders as this is a preserve of the Magistrate’s Court. Section 7(3) of the Magistrate’s Act provides that:-

1.
2.
3. Magistrate’s court shall have jurisdiction in proceedings of a civil nature concerning any of the following matters under African Customary Law-
 - a. ...
 - b. Marriage, divorce, maintenance or dowry.
 - c.

16. In the upshot, since this matter is still at interlocutory stage, granting some of the orders would amount to the court issuing final orders on some issued without allowing parties to adduce evidence and ventilate on the same for adjudication on full trial. This being the case, the only order the court can issue at this stage is preservation of all the suit properties whether jointly or solely registered in the names of both parties until the determination of the suit.

17. Therefore, the court proceeds to make the following orders:-
- a. An order of temporary injunction be and is hereby issued restraining the Defendant from selling, offering for sale, charging, leasing, transferring or otherwise dealing with the suit premises Ruiru/Mugutha 1/1XX7, Nairobi/Block 82/2XX6, Ruiru Block Mugutha Block / T1XX0, Kirinyaga/Ndia/[[Particulars Withheld]] Property.



- b. The parties to proceed to hearing of the main suit.
- c. Mention on before the Deputy Registrar for pre-trial directions.
- d. Directions/orders and mention date to be served upon the Respondent and or his counsel.

It is hereby ordered.

**RULING DATED, SIGNED AND DELIVERED AT KIAMBU VIA ELECTRONIC MAIL THIS
15TH DAY OF JULY, 2024.**

D. O. CHEPKWONY

JUDGE

