



REPUBLIC OF KENYA



KENYA LAW
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**Mutisya v Kithu (Civil Appeal E392 of 2022)
[2024] KEHC 8104 (KLR) (Civ) (8 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8104 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E392 OF 2022

DAS MAJANJA, J

JULY 8, 2024

BETWEEN

DANIEL NZUSYO MUTISYA APPELLANT

AND

JOSEPHINE MUTINDI KITHU RESPONDENT

(Being an appeal from the Ruling and Order of Hon. A.N. Makau, PM dated 12th May 2022 at the Magistrates Court at Milimani, Nairobi Misc. Application No. E063 of 2022)

JUDGMENT

1. This is an appeal by the Appellant against the ruling of the Subordinate Court dated 12.05.2022 (“the Ruling”) where it allowed the Respondent’s application dated 21.01.2022 (“the Application”) by granting a temporary injunction against the Appellant restraining him, inter alia, from physically, mentally, verbally, psychologically and/or sexually abusing and/or threatening to abuse the Respondent, her children, relatives, friends, staff and/or any other person associated with the Respondent. He was also restrained from making any other contact with the Respondent (whether by telephone correspondence or otherwise) unless otherwise through her advocate.
2. The appeal is grounded in the memorandum of appeal dated 10.06.2022 and has been canvassed by way of written submissions which are on record and which I have considered.
3. I do not propose to deal with this matter in the manner contemplated by the parties as the matter originated as an application under the [Protection Against Domestic Violence Act](#) (Chapter 151 of the Laws of Kenya) (“the Act”) seeking interim protection against the Appellant on the grounds that the parties started cohabiting as husband and wife between 2011 up until May 2017, when their being together was no longer tenable, sustainable nor serving any meaningful purpose as the Appellant changed his character and turned cruel. The Appellant denied the allegations against him.



4. It is clear to me from reading of the record that there are many contested facts. Bearing in mind that the initial order was made on 12.05.2022, this matter ought to have been heard and determined by the Subordinate Court in full by taking oral evidence. For all intents and purposes, the application filed under the *Act* is the suit. While the court has inherent jurisdiction to issue interim relief, I think part III of the *Act* contemplates that the application filed before the court will be heard in full and determined once and for all. Apart from this matter, there is a pending matter before the Children's Court which likewise ought to have been determined.
5. In the circumstances of this case and to facilitate the hearing of the matter by the Subordinate Court, I am constrained to make the following orders:
 - a. The appeal is dismissed with no order as to costs.
 - b. The suit before the Subordinate Court shall be heard within 3 months from the date hereof.
 - c. The interim orders in force shall stand discharged within 3 months from the date hereof.

DATED AND DELIVERED AT NAIROBI THIS 8TH DAY OF JULY 2024.

D. S. MAJANJA

JUDGE

