



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**JN v NMM (Matrimonial Case E076 of 2022)  
[2023] KEHC 22109 (KLR) (Family) (4 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 22109 (KLR)

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

**MATRIMONIAL CASE E076 OF 2022**

**EKO OGOLA, J**

**JULY 4, 2023**

**BETWEEN**

**JN ..... APPLICANT**

**AND**

**NMM ..... RESPONDENT**

**RULING**

1. The Application before this Court is dated October 21, 2022. The Applicant prays for the following:-
  - a. Spent
  - b. That a declaration be made that the properties known as LR 313/18288 Dandora, Juakali Association and Dundori/Lanet Block 11/161, with the improvements and the buildings, are matrimonial properties and that neither party including their agent, servants or any other person claiming any right whatsoever can sell, charge, or dispose of in a whatsoever manner until the hearing and determination of the main suit and/or further orders are issued by this court.
  - c. That Respondent be ordered to deposit with the Court the Original title of the said properties: LR 313/18288 Dandora, Juakali Association and Dundori/ Lanet Block 11/161 which are currently under his possession and an injunction be issued restraining the respondent and his agents from damaging the interior, exterior and fittings of the house until the hearing and determination of the main suit and/or further orders are issued by this honourable court.
  - d. That pending the hearing and determination of this suit, an urgent temporary injunction do issue restraining the respondent, his servant and/or agent from wasting, damaging or alienating



and/or otherwise interfering with the following matrimonial properties. LR 313/18288 Dandora, Juakali Association and Dundori/Lanet Block 11/161.

- e. That this honorable court be pleased to make such other orders as may be appropriate to meet the ends of justice.
  - f. That the costs of this Application be provided for.
2. The Application is based on the grounds set forth therein and the Supporting Affidavit of the Applicant.
  3. The Applicant and the respondent solemnized their marriage on February 26, 1999. The parties dissolved their marriage and a Certificate of Making Decree Nisi Absolute was issued on March 22, 2022. The Applicant states that her wish is for the matrimonial property acquired during the subsistence of the marriage be divided equally between her and the respondent. However, she avers that the respondent is in the process of wrongfully disposing of/wasting the matrimonial property. The Applicant is apprehensive that unless the orders sought are granted, the respondent may dispose of/waste the matrimonial property to the Applicant's detriment.
  4. The Application is unopposed.

### **Determination**

5. I have considered the Application, the Affidavit and the Annexures on record.
6. The Applicant in Prayer (b) prays for this Court to declare the properties known as LR 313/18288 Dandora, Juakali Association and Dundori/Lanet Block 11/161, with the improvements and the buildings to be matrimonial properties. Matrimonial property is defined in Section 6 of the [Matrimonial Property Act](#) as follows:
  - “(1) For the purposes of this Act, matrimonial property means—
    - (a) the matrimonial home or homes;
    - (b) household goods and effects in the matrimonial home or homes;  
or
    - (c) any other immovable and movable property jointly owned and acquired during the subsistence of the marriage”
7. For a property to be declared to be matrimonial property, it must constitute the matrimonial home or homes of the parties and household goods and effects in such home or homes. Other property jointly owned and acquired during the subsistence of the marriage of the parties also constitutes matrimonial property. It is clear from the definition that the acquisition of a property during the subsistence of a marriage does not necessarily make it a matrimonial property.
8. The Applicant has annexed several loan applications forms where she applied for loan facilities from AFCO Sacco, Cooperative bank, and Family Bank. The loans were for paying title fees and for the development of a plot. There is no exact property mentioned. Annexure JN10A and B of the Applicant's bundle of documents is a handwritten Sale Agreement and a document dubbed Dandora Jua Kali Association that states that the Respondent is the owner of property known as LR/209/18288 Kangundo Road, Plot No Block-5-298.
9. The Applicant annexed the green card of the property known as Dundori/Lanet Block 11/161. It was registered in the name of the respondent on March 19, 2004. For this property to be declared



matrimonial property, it has to be jointly owned or jointly acquired. At this instance in the suit, it is impossible to know whether the said property was jointly acquired. Therefore, LR 313/18288 Dandora, Juakali Association and Dundori/Lanet Block 11/161 cannot be declared as matrimonial property. I, therefore, dismiss prayer (b).

10. The Applicant in Prayer (c) and (d) seek for the title to declare LR 313/18288 Dandora, Juakali Association and Dundori/Lanet Block 11/161 matrimonial property be deposited in court and a temporary injunction be issued restraining the respondent from wasting, damaging, alienating or otherwise interfering with the two properties. In *Giella –Vs- Cassman Brown & Co Ltd* (1973) EA 358 that:-

“The Conditions for the grant of an interlocutory injunction are well settled in East Africa. 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.”

11. The court is at this stage required to satisfy itself that there is a prima facie case established. The Court of appeal in *Mrao Ltd –Vs- First American Bank of Kenya Ltd & 2 Others* (2003) KLR 125 considered what constitutes a prima facie case and held that:

“In civil cases, a prima facie case is a case in which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant’s case upon trial. That is clearly a standard, which is higher than an arguable case.”

12. The applicant’s case is hinged on the fact that the property in question is the matrimonial property and that the same could be sold without her consent. Section 7 of the said *Matrimonial Property Act* provides the manner of dividing of matrimonial property. The section states that:-

“Subject to section 6 (3), ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition, and shall be divided between the spouses if they divorce or their marriage is otherwise dissolved.”

13. The applicant has proved that property known as Dundori/Lanet Block 11/161 was purchased and registered in the name of the respondent during the subsistence of their marriage. At this juncture, I cannot conduct a mini-trial on whether the Applicant is entitled to the said property as matrimonial property. However, she has established a prima facie case that she is going to suffer irreparable loss if a temporary injunction is not issued.

14. When it comes to the property known as LR 313/18288 Dandora, Juakali Association, the Applicant has not evidenced in any way that the said property is linked to either the respondent or her. She however annexed a handwritten Sale Agreement and a document dubbed Dandora Jua Kali Association that states that the Respondent is the owner of property known as LR/209/18288 Kangundo Road, Plot No Block-5-298.

15. It is unclear whether LR 313/18288 Dandora, Juakali Association and LR/209/18288 Kangundo Road, Plot No Block-5-298 are one and the same plot. However, since LR/209/18288 Kangundo



Road, Plot No Block-5-298 was purchased November 1, 2005 which was during the subsistence of their marriage then the Applicant has established a *prima facie* case that she is going to suffer irreparable loss if a temporary injunction is not issued.

16. In the interest of justice, I make the following orders:-

- a. That an order of temporary injunction is hereby issued restraining the Respondent from damaging, selling, charging or otherwise interfering in any way the properties known as LR/209/18288 Kangundo Road, Plot No Block-5-298 and Dundori/Lanet Block 11/161.
- b. Cost of the Application be in the cause.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 4<sup>TH</sup> DAY OF JULY 2023**

.....

**E.K. OGOLA**

**JUDGE**

**In the presence of:**

Ms. Rende for the Petitioner

Gisiele Muthoni Court Assistant

