



**LN v TT (Civil Suit E071 of 2021) [2025] KEHC 13274 (KLR)
(Family) (26 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13274 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL SUIT E071 OF 2021
PM NYAUNDI, J
SEPTEMBER 26, 2025
IN THE MATTER OF SECTION 17 OF THE MATRIMONIAL PROPERTY ACT, 2013
AND
IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010**

BETWEEN

LN APPLICANT

AND

TT RESPONDENT

RULING

1. The Applicant has filed duplicate applications dated 15th October 2021 and 9th November 2011 in which she seeks interim orders pending the hearing and determination of the Originating Summons herein dated 15th October.
2. She seeks that the respondent whether by himself, his agents, servants and or employees be restrained from howsoever alienating, disposing, selling, encumbering, assigning, transferring or in any other manner dealing with the properties:
 - a. Land Parcel No. Kajiado/ Kaputiei North/ XXX-0.080 acres
 - b. Land parcel No. KJD/Kitengela/XXX- 0.083
 - c. Land Parcel No. Ngong/Ngong/ 1XXX -0.09 Acres; Land Parcel No. Ngong/Ngong/XXX -0.09 Acres; Land Parcel No. Ngong/Ngong/XXX -0.09 acres
 - d. 2 Flats Apartments in Donholm (Title is at the bank)



- e. Matrimonial Home in Rongai (title has not been issued yet but there is an agreement that was used to purchase the said parcel of land)
 - f. Timas General Suppliers
 - g. Toyota V8 KBX XXXS
 - h. JETTA KCH XXXU
 - i. Subaru KCX XXX C
3. The Applicant prays further that the Court ‘preserve’ the above listed properties. The Applications are supported by the affidavit sworn by the applicant in which she avers that she and the respondent were married in 2001 and she has subsequently filed for divorce. She avers further that the enumerated assets were acquired during the pendency of the marriage and therefore can be deemed to be matrimonial properties. She states that she contributed to the acquisition of the properties and is therefore entitled to a share of the properties on account of her financial and non-financial contribution. She states that unless the interim orders are granted the respondent is likely to sell, transfer, assign, alienate or in any manner dispose of the property to her detriment.
 4. The Respondent has sworn a replying affidavit on 12th May 2024. He denies that there is a marriage between the two. That whereas they cohabited with the applicant she has not contributed to the acquisition of the assets as alleged. He concludes that in any event there is no proof that the applicant will suffer irreparable harm if the orders sought are not granted.
 5. In further affidavit sworn by the applicant she avers that the parties were married and in fact there has been a *decree nisi* issued by the Court. The Respondent has sworn a supplementary affidavit in which he states that he has challenged the orders giving rise to the *decree nisi* as the same proceeded *ex parte*.
 6. At the close of the pleadings, the Court directed that both parties file written submissions. Both parties have complied the Applicants submissions are dated 13th June 2022 while those of the respondent are dated 10th June 2025.
 7. The Applicant frames the issue for determination as-
 - a. Whether the applicant has established a *prima facie case* to warrant issuance of temporary injunction and preservation of the properties listed above.
 8. It is submitted that the applicant has met the legal threshold for the grant of a temporary injunction, she has demonstrated that the properties were acquired during the pendency of the marriage, she contributed to the acquisition of the properties and unless the orders are granted she will suffer irreparable loss. Reference is made to the decisions in *Giella vs Cassman Brown & Co. Ltd* [1973] EA 358; *Silvester Momanyi vs Guiar Ahmed Motari & Another; Mrao Ltd vs First American Bank Ltd & 2 Others* [2003] KLR 125
 9. The respondent on the other hand frames the issues for determination as
 - a. Whether there was a valid marriage between the applicant and respondent
 - b. Whether the suit properties identified can be said to be matrimonial property
 - c. Whether the respondent is entitled to costs of the suit
 10. The respondent submits that the applicant has not established that there was a marriage between the parties and states no presumption of marriage can be inferred and relies on the Supreme Court decision



in *Mary Nyambura Kangara versus Paul Ogari Mayaka* [2003] eKLR and in *BKR v PWG* [2024] KEHC 2070 (KLR) that held parties had to have been in a marriage for there to be distribution of matrimonial property. Finally, the respondent urges that he be awarded costs as the application is for dismissal and cites the decision in *Cecilia Karuru Ngavu v Barclays Bank of Kenya & Another* [2016] eKLR.

Analysis and Determination.

11. Having considered the pleadings herein, submissions on record and the relevant law I discern the issues for determination are:
 - i. Whether the Applicant has met the threshold for the grant of injunctive orders?
 - ii. Who should pay costs?
12. At the outset, I wish to observe that the issues as framed by the respondent can only be determined upon the hearing of the Originating Summons. At this stage the Court is only concerned with preserving the substratum of the main suit so as to not prejudice the successful litigant.
13. The Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR reiterated the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent and stated thus

It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. See *Kenya Commercial Finance Co. Ltd v. Afraha Education Society* [2001] Vol. 1 EA 86. If the applicant establishes a *prima facie case* that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage. If *prima facie case* is not established, then irreparable injury and balance of convenience need no consideration. The existence of a *prima facie case* does not permit "leap-frogging" by the applicant to injunction directly without crossing the other hurdles in between. (Emphasis Supplied)

14. As stated the principles in the *Giella Case* are to be applied sequentially and where an applicant fails to muster a preceding hurdle the next one is not up for consideration.
15. There are numerous decisions that have applied this test and expounded on the three criteria to be considered. In *Pius Kipchirchir Kogo v Frank Kimeli Tena* 2018 KEELC 2424 (KLR) the Court summarized it thus-

Prima facie case has been explained to mean that a serious question is to be tried in the suit and in the event of success, if the injunction be not granted the plaintiff would suffer irreparable injury... irreparable injury means that the injury must be one that cannot be adequately compensated for in damages ... The meaning of balance of convenience in favour of the plaintiff is that if an injunction is not granted and the suit is ultimately decided in favour of the plaintiff, the inconvenience caused to the plaintiff would be greater than that which would be caused to the defendants if an injunction is granted but the suit is ultimately dismissed.



16. Applying the well settled three-pronged test to the facts of the case. On whether or not the applicant has established a *prima facie case*, to meet the threshold the applicant has to demonstrate that the assets may comprise matrimonial property. The basis of that claim is that there is or was a marriage between the parties and secondly the properties were acquired during the pendency of the marriage. On the first limb, I am of the view that the applicant has established a *prima facie case*. The question as to whether or not there was a marriage between the parties is one that is triable. The respondent contends that he has challenged the decision of the trial court until that decision is overturned it remains a valid order.
17. On the 2nd limb, the applicant has listed a number of assets, it is mandatory in cases of this nature that there be evidence of ownership either jointly or by one spouse and that the property was acquired/ developed during the pendency of the marriage.
18. I find that there is no proof of ownership or existence in respect of the following properties-
 - a. Timas General Suppliers
 - b. Toyota V8 KBX XXXS
 - c. JETTA KCH XXXU
 - d. Subaru KCX XXX C
19. I find therefore that the applicant has established a *prima facie case* with regard to the following assets-
 - a. Land Parcel No. Kajiado/ Kaputiei North/ XXX-0.080 acres
 - b. Land parcel No. KJD/Kitengela/XXX- 0.083
 - c. Land Parcel No. Ngong/Ngong/ 1XXX -0.09 Acres; Land Parcel No. Ngong/Ngong/XXX -0.09 acres; Land Parcel No. Ngong/Ngong/XXX -0.09 acres
 - d. 2 Flats Apartments in Donholm
 - e. Matrimonial Home in Rongai
20. With regard to the Donholm and Matrimonial Home in Rongai in including them I was influenced by the fact that the respondent admits to their existence and in fact in his application in the divorce matter he is challenging their exclusion therefrom.
21. The 2nd test is whether the applicant will suffer irreparable loss. There is no doubt in my mind that in the event that the orders do not issue and the applicant suffers she will suffer irreparable damage. I am conscious that a party's interest in matrimonial property extends beyond the financial claim to include the sentimental attachment that one may have to an asset. In addition to the damages that may be compensated by costs, the Court is obligated to consider these.
22. On the last test, the balance of convenience favours that the *status quo* be maintained.
23. For the aforesaid reasons I make the following orders-
 - a. The Respondent by himself or his agents, servants and or employees is restrained from alienating, disposing, selling, encumbering, assigning, transferring or in any other manner dealing with the properties listed below, pending the hearing and the determination of the Originating Summons, to the detriment of the applicant's interest-
 - i. Land Parcel No. Kajiado/ Kaputiei North/ XXX-0.080 acres
 - ii. Land parcel No. KJD/Kitengela/XXX- 0. 083



- iii. Land Parcel No. Ngong/Ngong/ 1XXX -0.09 Acres; Land Parcel No. Ngong/Ngong/ XXX -0.09 acres; acres Parcel No. Ngong/Ngong/XXX -0.09 acres
- iv. 2 Flats Apartments in Donholm
- v. Matrimonial Home in Rongai
- b. The Originating Summons to proceed to hearing by way of *viva voce* evidence. Mention before the Deputy registrar on 5th November 2025 to confirm the parties have complied with order 11 of the [Civil Procedure Rules](#) and taking of further directions
- c. Each party to bear their own costs.
- d. Parties at liberty to exercise their right of appeal within 30 days

It is so ordered.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 26TH DAY OF SEPTEMBER, 2025.

P. M. NYAUNDI

HIGH COURT JUDGE

In the presence of:

Fardosa - Court Assistant

Ms. Esami holding brief for Nyamu for Respondents

