



**AKN v SKK (Matrimonial Cause E006 of 2025)
[2025] KEHC 13706 (KLR) (Family) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13706 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MATRIMONIAL CAUSE E006 OF 2025**

H NAMISI, J

OCTOBER 3, 2025

IN THE MATTER OF SECTIONS 2,6,7,9 AND 17 OF MATRIMONIAL PROPERTY ACT

AND

**IN THE MATTER OF AN APPLICATION FOR DECLARATION
AND PRESERVATION OF MATRIMONIAL PROPERTY RIGHTS**

BETWEEN

AKN APPLICANT

AND

SKK RESPONDENT

RULING

1. Before the Court is Notice of Motion dated 23 January 2025 filed under sections 2,6,7,9,12 and 17 of the Matrimonial Property Act, 2013 seeking the following orders:
 - i. (spent);
 - ii. That pending the hearing and determination of this Application, a declaration is issued House No. XX Red Hill Estate on LR XXXXX is a matrimonial property;
 - iii. That pending the hearing and determination of the Application, this Court be pleased to declare that the Applicant has a beneficial interest in the matrimonial property proportionate to his financial and non-financial contributions towards the acquisition and improvement of the subject property;



- iv. That pending the hearing and determination of the Originating Summons filed herewith, a declaration is issued that the Applicant has a beneficial interest in the matrimonial property proportionate to his financial and non-financial contributions towards the acquisition and improvement of the subject property;
 - v. That pending the hearing and determination of this Application the Honourable Court be pleased to issue an order restraining the Respondent, herself, her agent, her servant, or anyone acting on her behalf from selling, transferring, alienating, or disposing of the suit property number;
 - vi. That pending the hearing and determination of the Originating Summons the Honourable Court be pleased to issue an order restraining the Respondent, herself, her agent, her servant, or anyone acting on her behalf from selling, transferring, alienating, or disposing of the suit property number;
 - vii. That pending hearing and determination of this Application the Honourable Court be pleased to declare that the Respondent holds the Applicant's beneficial interest in the suit property in trust for him;
 - viii. That pending hearing and determination of the Originating Summons, the Honourable Court be pleased to declare that the Respondent holds the Applicant's beneficial interest in the suit property in trust for him;
 - ix. That this Honourable Court be pleased to grant such other or further orders as it may deem fit and just in the circumstances in the interest of justice.
2. The Application is premised on the grounds on the face thereof and supported by the Affidavit sworn by the Applicant. The Applicant avers that he and the Respondent were lawfully married on 5 September 2009, a union that was blessed with three children. The marriage experienced rocky patches, culminating in their physical separation in August 2024, a fact which is not in dispute.
 3. The Applicant states that the suit property was acquired during the subsistence of their marriage through their joint efforts. He avers that he initiated the acquisition process by making an enquiry with the developer, HassConsult, on 21 May 2011 and proceeded to reserve a unity. The Applicant has detailed his financial contribution towards the acquisition of the suit property, which included payment of an initial deposit. He further provides an explanation for why the property is registered in the sole name of the Respondent. The Applicant states that this was a condition precedent for the Respondent to secure a favourable mortgage facility from her then-employer, the Central Bank of Kenya, to finance the balance of the purchase price. He asserts that he agreed to this arrangement for the family's collective benefit and consequently executed a Deed of Variation on 10 February 2012 to have his name removed from the Agreement for Sale and substituted with that of the Respondent.
 4. The Applicant states that he has reasonable apprehension that the Respondent is likely to dispose of or encumber the property to his detriment, which would cause him irreparable loss.
 5. The Respondent filed Replying and Further Affidavits, in which she admits the fact of the marriage and their subsequent separation. The Respondent categorically denies any intention of disposing of or encumbering the suit property. In her Further Affidavit, she describes the Applicant's apprehension as wholly unjustified. The Respondent states that she has instructed her Advocates to concede to the Application for the maintenance of status quo. She avers that the property was always intended as a long-term security for their children and that her position in this regard remains unchanged. The



Respondent goes further to express her willingness to pursue appropriate consent orders to concretize and realise the shared intention of preserving and using property for their children.

6. The Respondent contests the Applicant's narrative regarding the contributions. She presented a detailed account of her own financial and non-financial contributions.
7. The Applicant also filed a Further Affidavit in which he countered the Respondent's claims. He accuses the Respondent of having mismanaged the rental income between July 2016 and December 2019, alleging that the Respondent collected rent of Kshs 75,000/- per month but failed to remit mortgage payment for 22 months, resulting in arrears of approximately Kshs 1.95 million. He further deposes that the Respondent's lump-sum payments in 2023 were not made voluntarily but were a desperate measure to avert a threatened auction by the Central Bank of Kenya, which had issued a demand notice on 21 November 2022 over arrears of Kshs 4.94 million. The Applicant claims that he was unaware of the situation until the demand notice was served on the property's tenant. He was then compelled to liquidate his SACCO savings to make a repayment of Kshs 1.86 million.
8. The Application was canvassed by way of written submissions. The Respondent opted not to file any submissions.

Analysis & Determination

9. Having read and considered the Application, the Affidavits and submissions, the issue for determination is whether this Court can grant the orders sought at the interlocutory stage. This Court must be careful to distinguish between the two distinct categories of relief sought in the instant application. The first category, seeking injunctive orders, is procedural and precautionary, designed to preserve the subject matter of the suit pending the full hearing. The second category, seeking declaratory orders, is substantive and final, aiming for a binding pronouncement on the legal rights of the parties. These two categories are governed by different legal principles and procedural considerations.
10. Regarding the injunctive orders, the Respondent has given an unequivocal undertaking to this Court that she has no intention of selling the property. The statement which is contained in a sworn Affidavit carries significant legal weight. In view of this, this Court will simply formalise the Respondent's desire for status quo by granting the order.
11. Regarding the declaratory orders, the Applicant seeks definitive judicial pronouncement on his substantive rights, which is typically made after a full hearing where evidence is tendered, witnesses are cross-examined and the Court has had the opportunity to meticulously test the veracity of the competing factual claims. It is a cardinal principle of civil procedure that final orders cannot be granted at an interlocutory stage, particularly where there are substantially and hotly contested issues of fact. To make a declaration at this stage that a trust exists and that the Applicant has a beneficial interest proportionate to his contribution would require the Court to make conclusive findings of fact on these complex and disputed issues based solely on conflicting affidavit evidence. This would be procedurally improper and manifestly unfair to both parties, as it would deny them the fundamental right to cross examine each other on their detailed and conflicting narratives.
12. For the foregoing reasons, the Notice of Motion dated 23 January 2025 is allowed in terms of prayer 6. An order of injunction is hereby issued restraining the Respondent, herself, her agent, her servant, or anyone acting on her behalf from selling, transferring, alienating, or disposing of the suit property number known as House XX Red Hill Estate erected on LR XXXXX, pending the hearing and determination of this suit. Costs shall be in the cause.



DATED AND DELIVERED AT NAIROBI THIS 3 DAY OF OCTOBER 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

for the Applicant: Mrs. Okullo

for the Respondent : Mr. Ogola

Court Assistant: Lucy Mwangi

