



REPUBLIC OF KENYA



KENYA LAW
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**Leitich v Leitich (Environment and Land Case E050 of 2025)
[2025] KEELC 6515 (KLR) (1 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6515 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE E050 OF 2025**

**MAO ODENY, J
OCTOBER 1, 2025**

BETWEEN

ANN CHEPKORIR LEITICH PLAINTIFF

AND

WILSON LEITICH DEFENDANT

RULING

1. This ruling is in respect of the Plaintiff/Applicant's Notice of Motion Application dated 16th May, 2025 and the Defendant's Notice of Preliminary Objection dated 27th May, 2025. The Plaintiff's Notice of Motion Application seeks the following orders:
 1. Spent
 2. Spent
 3. That pending the hearing and determination of this suit, there be an express order of injunction restraining the Respondent, his agents or servants from threatening the Applicant's family members or in any way interfering with her peaceful enjoyment of the suit property, TITLE NO 8907/1 situate in Rongai Nakuru County, until the previously court ordered subtitling process is complete.
 4. That an order do issue requiring the enforcement of the final judgement in Nakuru Family Division Matrimonial Cause 7 of 2015 dated 30th March, 2023 by Hon. Lady Justice T.M. Matheka requiring the following orders:
 - a. A declaration be and is hereby issued that land parcels known as L.R No 8907/1 situate in Rongai is matrimonial property. The property is LR No Rongai/Rongai/2/83 is not matrimonial property for purposes of distribution.



- b. A declaration be and is hereby issued that the applicant and respondent are both entitled to equal shares of L.R No 8907/1 situate in Rongai.
 - c. An order do and is hereby issued directing the apportionment of equal share to the applicant and the respondent herein over the property known as LR No 8907/1 situate in Rongai. (sic)
 - d. The applicant's share to contain the matrimonial home.
 - e. Each party to bear its own costs.
5. That costs of this application be provided.
 6. That the Honourable Court do issue any other orders that it deems necessary.
2. The application is supported by the annexed affidavit of Ann Chepkorir Leitich, who deponed that she is married to the Respondent and they are both bona fide proprietors of Title No 8907/1 situate in Rongai, Nakuru County subject to subdivision as decreed in the judgment of Honourable Lady Justice Mumbua T. Matheka, of 30th March, 2023.
 3. It was her deposition that despite the said suit being concluded in 2023, the process of subdividing and changing the title deed has been deliberately delayed and the Respondent has allowed unknown people to encroach on the property and erect wall fences, till the land and intimidated her and her family. The applicant urged the court to allow the application as prayed.
 4. Wilson Kiptoo Leitich, the Defendant/Respondent filed a Replying Affidavit sworn on 30th May, 2025, and deponed that the application is an abuse of court process as the matters raised in the present suit and application are res judicata as the issues and reliefs were comprehensively determined in Nakuru High Court Matrimonial Property Cause No 7 of 2015. The Respondent affirmed his intention to comply with the terms of the High Court judgment and deponed that he has made substantial steps towards subdividing the suit property including payment of outstanding rates amounting to Ksh 105,520/=.
 5. The Respondent deponed that he has engaged the services of Nakuplan Consultants Limited to carry out the subdivision of the suit land which is still on going and he has no intention of interfering with the Applicant's occupation of her designated portion of land. He urged the court to dismiss the application with costs.
 6. The Defendant filed a Notice of Preliminary Objection dated 27th May, 2025, based on the following grounds:
 1. That this Honourable Court lacks jurisdiction to entertain or enforce a judgment delivered by the High Court in a matrimonial property cause, which falls outside the scope of matters contemplated under Article 162 (2) (b) of *the Constitution* and Section 13 of the *Environment and Land Court Act*.
 2. That the Plaintiff's claim is res judicata and offends the provisions of Section 7 of the *Civil Procedure Act*, the subject matter having been directly and substantially in issue between the same parties in a previous suit heard and finally determined by a court of competent jurisdiction, being the High Court in Nakuru Matrimonial Cause No.7 OF 2015 (Ann Leitich v Wilson Leitich).
 3. That the Plaintiff's attempt to enforce a judgment through a fresh suit constitutes an abuse of the court process, as the proper forum for enforcement of a High Court judgment is within



the said court and in accordance with the Civil Procedure Rules, not by instituting a new cause in a different court.

4. That the suit is incompetent, bad in law, frivolous, vexatious and otherwise and abuse of the court process, and ought to be struck out with costs.

Plaintiff/applicant's Submissions

7. Ms. Khaminwa, counsel for the Plaintiff filed submissions dated 30th May, 2025, and submitted that the Preliminary Objection ought to be dismissed as the prayers sought in the application go beyond enforcement and thus a fresh cause of action has been filed before this Honorable Court.
8. Counsel submitted that this court has the jurisdiction to grant the orders of injunction as the Applicant and her son have been subjected to physical violence as per the P3 forms and evidence of the criminal complaint.
9. Ms. Khaminwa further submitted that the Applicant has established a prima facie case as there has been trespass on the Applicant's side where the matrimonial home is and she and her family have been subjected to intimidation at the behest of goons directed by the Respondent.
10. Counsel cited the cases of *Giella v Cassman Brown & Co Ltd* [1973] E.A 358, *Exclusive Estates Ltd v Kenya Posts & Telecommunications Corporation & Another*, Civil Appeal No 62 of 2004, *Robert Mugo Wa Karanja v Ecobank (Kenya) Limited & Another* [2019] and *Board of Management of Uhuru Secondary School v City County Director of Education & 2 others* [2015].
11. It was counsel's further submission that the injury, distress from trespass and violence are losses, which cannot be adequately compensated by damages. Further that though the value of the suit property can be ascertained, it would not be right to say that the Plaintiff can be compensated by way of damages.
12. According to counsel, the applicant has demonstrated that land is unique and no one parcel can be equated in value to another and relied on the cases of *Korari Agencies Limited v Epcu Bilders Limited* (2013) and *JM Gichanga v Cooperative Bank of Kenya Limited* (2005).
13. On the limb on whose favour the balance of convenience tilts, counsel stated that the same tilts towards the Plaintiff/Applicant as she has been deprived of enjoying her property, and relied on the cases of *Jaj Super Power Cash and Carry Ltd v Nairobi City Council & 20 others* (Civil Appeal No 111 of 2002), *Nguruman Ltd v Jan Bonde Nielsen* (2014) and *Pius Kipchirchir Kogo v Frank Kimeli Tenai* (2018). Counsel urged the court to allow the application as prayed.

Defendant/respondent's Submissions

14. Mr. Mutai, counsel for the Respondent filed submissions dated 4th May, 2025 and identified the following issues for determination:
 - a. Whether the Preliminary Objection dated 27th May, 2025 is merited and ought to be allowed?
 - b. Whether or not the Plaintiff is entitled to the injunctive relief sought in her application dated 16th May, 2025
 - c. Who should bear the costs?
15. It was counsel's submission that this court lacks jurisdiction to enforce a judgment delivered by the High Court in a matrimonial property cause, relied on Section 7 of the *Civil Procedure Act* and submitted that the Plaintiff's present suit is res-judicata and does not raise a new issue but rather seeks



to compel action on a matter already adjudicated. Counsel cited the case of *ET v Attorney General & Another* [2012] eKLR.

16. Counsel submitted that the Plaintiff's application seeks to restrain the Defendant from interfering with a portion of land she currently occupies which has yet to be surveyed, delineated and formally registered in her name pursuant to the judgment in Matrimonial Cause No 7 of 2015. It was counsel's submission that the land in question does not exist in law as a distinct, identifiable or registrable parcel and an injunctive relief over such an indeterminate subject matter presents significant challenges.
17. Mr. Mutai further submitted that courts have consistently held that injunctive orders must relate to clearly defined and existing property and not speculative or future rights over un-delineated land.
18. Counsel relied on the cases of *Giella v Cassman Brown & Co Ltd* [1973] E.A 358, *Maithya v Housing Finance Co. of Kenya & Another* [2003] eKLR, *Tassia Coffee Estate Ltd v Gichanga Kimani & 5 others* [2015] eKLR and *Kenya Commercial Finance Co. Ltd v Afraha Education Society* [2001] eKLR, and submitted that the balance of convenience is in favor of the Defendant and courts have consistently discouraged the use of injunctive applications to shield parties from imagined fears.
19. On the issue of costs, counsel urged the court to dismiss the Plaintiff's application with costs and uphold the Preliminary objection. Counsel cited the case of *Republic v Rosemary Wairimu Munene, Ex-Parte Applicant v Ihururu Dairy Farmers Co-operative Society Ltd.*

Analysis and Determination

20. The issues for determination are:
 - a. Whether the Preliminary Objection dated 27th May, 2025 is merited and ought to be allowed?
 - b. Whether or not the Plaintiff is entitled to the injunctive relief sought in her application dated 16th May, 2025?
21. It is not disputed that there was a Nakuru High Court Matrimonial Cause No.7 OF 2015, (*Ann Leitich v Wilson Leitich*) who are the parties in this suit. The parties also confirm that a judgment was delivered on 30th March 2023, by Honourable Lady Justice Mumbua T. Matheka, in the Matrimonial Cause which decreed the subdivision of TITLE NO 8907/1 situate in Rongai Nakuru County.
22. The respondent averred in the replying affidavit that he has made substantial steps in complying with the terms of the High Court judgment and has paid the outstanding rates of Ksh 105,520/= to facilitate the subdivision. He also stated that he has engaged the services of Nakuplan Consultants Limited to carry out the subdivision of the suit land which is still ongoing, and he has no intention of interfering with the Applicant's occupation of her designated portion of land. The Applicant has not controverted this averment.
23. The Respondent also stated that the delay in executing the subdivision was occasioned by the Applicant's own conduct, including an unsuccessful appeal against the judgment of the High Court, vide Nakuru Civil Application No. 105 of 2023: *Anne Leitich - v- Wilson Leitich & KETRACO*, which was dismissed on 22nd November 2024.
24. This is a matter that is purely based on the execution of the orders granted in Nakuru High Court Matrimonial Cause No 7 of 2015 where a judgment and decree have already been issued. This court cannot be used to execute orders that emanate from the High Court Matrimonial cause. There is no new cause of action that falls within the jurisdiction of this court to handle. The High Court had already decreed that a subdivision be done.



25. By a Plaint dated 16th May 2025, the Plaintiff herein sued the defendant seeking the following orders:
1. That order of injunction do issue restraining the Respondent, his agents or assigns from, from entering an, farming on and/or from erecting or causing to be erected thereon any structures, or from in any way interfering with the plaintiffs use and enjoyment of the plaintiff's portion of the said portion of the sub-divided property.
 2. That order of injunction do issue restraining the Respondent, his agents or assigns from encroaching trespassing, fencing, developin6 marketing, selling, alienating or in any other way dealing in the suit property Title No. 89071-situate in Rongai Nakuru County, until the court ordered subtitling process is complete.
 3. That pending the hearing and determination of this suit, there be an express order of injunction restraining the Respondent, his agents or servants from threatening the applicant's family members, encroaching, trespassing fencing, developing marketing, selling, alienating or in any other way dealing in the portion of the suit property that is designated for the Applicant.
 4. That the Honorable Court do issue an enforcement order requiring the final Judgement dated 30th March, 2023, wherein Hon. Lady Justice T. Matheka decreed that:
 - a. A declaration be and is hereby issued that land parcels known as L.R No 8907/1 situate in Rongai is matrimonial property. The property is LR No Rongai/Rongai/2/83 is not matrimonial property for purposes of distribution.
 - b. A declaration be and is hereby issued that the applicant and respondent are both entitled to equal shares of L.R No 8907/1 situate in Rongai.
 - c. An order do and is hereby issued directing the apportionment of equal share to the applicant and the respondent herein over the property known as LR No 8907/1 situate in Rongai. (sic)
 - d. The applicant's share to contain the matrimonial home.
 - e. Each party to bear its own costs.
26. From the Plaint, it is clear that the suit has been filed to assist in the execution of the orders that were granted in the Matrimonial Cause. A party need not file a fresh suit with similar prayers or additional prayers to camouflage that it is a different cause of action.
27. The enforcement of the orders lies in the High Court where they were issued and not this court. Consequently, the application for injunction is dismissed and the entire suit struck out as it is an abuse of court process. Parties have a recourse in the Matrimonial Cause No 7 of 2015, where the orders were issued an execution ought to take place there. Each party is to bear their own costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 1ST DAY OF OCTOBER 2025.

M. A. ODENY

JUDGE

