

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
HCCOMM NO. E514 OF 2025

ROSE NJAMBI MUNGA.....
PLAINTIFF/APPLICANT

VERSUS

DR. PETER KAHARA MUNGA.....1ST
DEFENDANT/RESPONDENT

AFRICA BANKING
CORPORATION.....2ND
DEFENDANT/RESPONDENT

ABC CAPITAL LIMITED.....3RD
DEFENDANT/RESPONDENT
CENTRAL DEPOSITORY AND SETTLEMENT

CORPORATION LIMITED.....4TH
DEFENDANT/RESPONDENT

RULING

1. Before the court for determination is the application by Rose Njambi Munga dated 1st August 2025, brought under Articles 45(3) and 50 of the Constitution, Section 6 and Section 12 of the Matrimonial Property Act, Order 40 Rules 1, 2 and 4,

Order 51 Rule 1 of the Civil Procedure Rules, 2010 and all other enabling provisions of the law

2. In summary, the Applicant seeks:

- i. A temporary injunction to restrain the Defendants, their agents, or anyone acting on their behalf from selling, transferring, disposing of, charging, or otherwise dealing with 75,000,000 shares in Britam Insurance Company Limited (comprising 25,000,000 shares owned by the Applicant and 50,000,000 shares registered in the 1st Defendant's name but alleged to be jointly acquired matrimonial property) pending the hearing and determination of the application.*
- ii. An interlocutory injunction on the same terms as above, pending the hearing and determination of the suit.*
- iii. Costs of the application.*

3. The application is premised upon the grounds set out on its face and is supported by the affidavit sworn by the Applicant. She avers that she is lawfully married to the 1st Defendant, Dr. Peter Kahara Munga, and that during the subsistence of their marriage, they jointly acquired 75,000,000 shares in Britam Insurance Company Limited. Of these, 25,000,000 shares are registered in her name, while 50,000,000 are registered in the 1st Defendant's name. She

contends that both constitute matrimonial property within the meaning of Section 6(1)(a) of the Matrimonial Property Act.

4. The Applicant deposes that without her knowledge or spousal consent, the 1st Defendant pledged the 50,000,000 shares as security for a credit facility advanced by the 2nd and 3rd Defendants, who, she alleges, proceeded with full knowledge of her beneficial interest in the said shares. She asserts that the Defendants are now taking steps to sell or realize the entire 75,000,000 shares, thereby threatening to deprive her of the only substantial matrimonial asset.
5. The Applicant maintains that the said transaction is unlawful, voidable, and contrary to Article 45(3) of the Constitution and Sections 6 and 12 of the Matrimonial Property Act, 2013. She clarifies that she was not a party to the previous suits filed by the 1st Defendant challenging the intended sale and that none of those proceedings addressed her matrimonial rights.
6. She expresses readiness to deposit Kshs. 100,000,000/= as security and submits that she stands to suffer irreparable harm if the shares are disposed of before the matter is determined. She therefore urges the Court to grant the injunctive orders sought, contending that the balance of convenience tilts in her favour.
7. The application is opposed through a Replying Affidavit sworn on 11th August 2025 by Faith Nteere, the Senior Legal Manager at African Banking Corporation Limited (2nd

Defendant). She avers that the application is made in bad faith and forms part of a series of vexatious and frivolous suits instituted to frustrate the 2nd Defendant's legitimate recovery efforts against the 1st Defendant.

8. She deposes that the 1st Defendant obtained several credit facilities from the 2nd Defendant, which are now in arrears, and that the same were secured by a lien over 75,000,000 Britam shares under CDS Account No. 14468757, together with executed blank share transfer forms, CDS4-AB transfer documents, and a memorandum of pledge securing sums of Kshs. 507,440.63 and USD 1,198,475, as well as a personal guarantee by the 1st Defendant.
9. It is averred that the borrower defaulted in repayment, prompting the 2nd Defendant to issue a demand notice dated 24th September 2024 seeking payment of Kshs. 274,386,928.12 and USD 1,232,450.28, failing which the pledged shares would be sold. The 1st Defendant subsequently filed multiple suits in various courts, including Milimani HCCOMM E602 of 2024, Kiambu HC E006 of 2025, and Machakos HC E010 of 2025 all challenging the same transaction. Each was either dismissed or struck out.
10. Ms. Nteere avers that the Applicant has now been introduced as a proxy of the 1st Defendant to perpetuate abuse of court process and obstruct the bank's recovery of its secured debt. She further contends that the Applicant's alleged marriage to the 1st Defendant is unproven and that the 50,000,000 shares are solely registered in the 1st

Defendant's name; hence, no evidence of joint ownership or spousal consent arises.

11. The 4th Defendant filed grounds of opposition dated 17th September 2025, contending that the application discloses no reasonable cause of action against it; that it is a stranger to the relationship between the Applicant and the 1st Defendant; and that its joinder is improper and unjustified. It maintains that the Applicant has failed to satisfy the legal threshold for the grant of an interlocutory injunction.

Analysis and determination

13. Having carefully considered the pleadings, affidavits, and rival submissions, the main issue for determination is whether the application meets the threshold for the grant of an interlocutory injunction.
14. The principles guiding the grant of interlocutory injunctions are well settled in **Giella v Cassman Brown & Co. Ltd [1973] EA 358**. The applicant must establish (a) a prima facie case with a probability of success, (b) that they will suffer irreparable injury which would not be adequately compensated by damages, and (c) if in doubt, the court will decide the matter on a balance of convenience.
15. The Court of Appeal in **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR** further clarified that these three conditions are sequential and not conjunctive, meaning that the failure to establish the first condition is fatal to the application.

16. A prima facie case is one that discloses an arguable right which has apparently been infringed. See **Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] KLR 125.**
17. The Applicant asserts beneficial ownership of 50,000,000 shares held in the 1st Defendant's name, alleging they were jointly acquired during marriage and therefore constitute matrimonial property. Section 6(1)(a) of the Matrimonial Property Act defines matrimonial property to include "the matrimonial home and household goods and effects in the matrimonial home or any other immovable and movable property jointly owned and acquired during the marriage."
18. Further, Section 12(1) of the Act provides that a spouse shall not, during the subsistence of a marriage, alienate or otherwise deal with any matrimonial property without the consent of the other spouse.
19. On the material before me, the Applicant's claim is not entirely without foundation, given that 25,000,000 of the shares stand in her name and she alleges that the remainder were acquired contemporaneously and for the benefit of both spouses. Whether a valid marriage existed and whether the remaining 50,000,000 shares constitute matrimonial property are issues that can only be determined upon a full hearing.
20. At this interlocutory stage, the Court's task is not to determine ownership conclusively, but to assess whether an

arguable and protectable interest has been shown. On the totality of the material before me, I am satisfied that the Applicant has demonstrated an arguable right warranting interim protection.

Irreparable Harm

21. The Applicant asserts that the intended sale of the shares would permanently deprive her of the only substantial asset she claims to have acquired during marriage. Shares in a listed company may fluctuate in value and, once sold to third parties, cannot easily be recovered. Monetary compensation may not fully vindicate the Applicant's constitutional right to equality in marriage and to property jointly acquired.
22. The Court in **Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR** observed that irreparable harm is that which cannot be adequately remedied by damages. Guided by this principle, I find that the loss of the shares before the hearing of the suit would occasion irreparable prejudice to the Applicant.
23. If the injunction is declined, the Defendants may proceed with the sale, effectively rendering the suit nugatory. Conversely, the grant of the injunction preserves the subject matter and the Defendants' security interest pending trial. The Applicant's offer to deposit Kshs. 100,000,000/= as security further mitigates potential prejudice to the Defendants. Accordingly, the balance of convenience tilts in favour of preserving the *status quo*.

24. In view of the foregoing, I am satisfied that the Applicant has met the threshold for the grant of an interlocutory injunction. Accordingly, the Court makes the following orders:

- i. A temporary injunction be and is hereby issued restraining the Defendants, their servants, agents, or any persons acting on their behalf from selling, transferring, disposing of, charging, or in any manner dealing with the 75,000,000 shares in Britam Insurance Company Limited pending the hearing and determination of this suit.***
- ii. The Applicant shall, within thirty (30) days, deposit the sum of Kshs. 100,000,000 in an interest-earning joint account in the names of the advocates for the Applicant and the 2nd Defendant, as security for the preservation orders herein.***
- iii. Costs of this application shall abide the outcome of the main suit.***

RULING delivered virtually, dated and signed at **NAIROBI**

This **30th** day of **October** 2025.

P.M. MULWA

JUDGE

In the presence of:

Mr. Tali Tali for Plaintiff/Applicant

Mr. Kiplagat for 2nd & 3rd Defendants

Ms. Atim h/b for Mr. Peter Waiyaki for 4th Defendant

Court Assistant: Carlos