



**PWN v WNN (Matrimonial Cause E008 of 2022)
[2025] KEHC 15349 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15349 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MATRIMONIAL CAUSE E008 OF 2022
HI ONG'UDI, J
OCTOBER 30, 2025**

BETWEEN

PWN PLAINTIFF

AND

WNN DEFENDANT

JUDGMENT

1. In the Originating Summons dated 21st November 2022 the plaintiff prays for the following orders;
 - i. That the honourable court be pleased to declare and do issue a declaration that property known as L.R Bahati /Engorusha Block 3/xxx measuring approximately 0.0410 ha currently registered in the name of the defendant is matrimonial property.
 - ii. That the honourable court be pleased to issue an Order for property known as L. R Bahati / Engorusha Block 3/xxx to be registered in the joint names of the plaintiff and the defendant to hold in trust for their children.
 - iii. That the honourable court be pleased to issue an order for permanent injunction restraining the defendant, his agents and or servants from interfering with the suit property L.R Bahati/ Engorusha Block 3/xxx.
 - iv. That costs of this suit be borne by the defendant.
2. The application is supported by the affidavit sworn on even date by the applicant. She deponed that sometime in the year 1994, she got married to the respondent under the Kikuyu customary law and they were blessed with four children. She stated that on or about the year 1999 they purchased land parcel number L.R Bahati /Engorusha Block 3/xxx from Fannita Commercial Agencies. Thereafter, they established their matrimonial home on the said land but the respondent subsequently transferred and caused the suit property to be registered in his name only. She further stated that on or about 23rd



- August, 2016 she registered a restriction on the suit property to prevent the respondent from arbitrarily disposing the said land without her consent. She added that the respondent filed Nakuru ELC Misc. Application number E011 of 2022 to have the restriction on the suit property lifted to enable him dispose it off.
3. She further deponed that the court directed that they file this suit for determination as to whether the suit property is matrimonial property. She stated that the respondent intends to sell the suit property for his own selfish reasons, despite the fact that this would render his family homeless. Thus, unless the respondent is restrained by an Order of this court from alienating, selling, disposing, transferring or in any manner dealing with the suit property without leave of court, she and her family stood to suffer irreparable loss.
 4. In response to the summons, the respondent filed a replying affidavit sworn on 14th December 2022. He averred that he married the applicant sometime in 1996 and that he is the registered proprietor of the suit property. He stated that he purchased the property from Fannita Commercial Agencies and was issued with receipts together with the title deed. He further stated he had not been able to access the suit property since the time he suffered an Ischemic stroke requiring hospitalization. He added that he wanted to charge the suit property to enable him secure funds for medical treatment. Thus, the injunction orders sought should be issued against the applicant because she had locked him out of the said property.
 5. The applicant filed a further affidavit sworn on 11th April 2023 where she reiterated the contents of her supporting affidavit and also denied having locked out the respondent from the suit property.
 6. The respondent filed a supplementary affidavit sworn on 3rd March 2023 where he annexed his replying affidavit dated 14th December 2022. He also filed a further affidavit sworn on 14th December 2022 by his sister, Martha Wanjiku Munene where she affirmed the contents of the said replying affidavit.
 7. Parties agreed to have the matter heard by way of viva voce evidence.
 8. The applicant testified as PW1 and she adopted her supporting affidavit as her evidence in chief and stated that the respondent was her husband and father of her children. She confirmed that they are not legally married though the respondent had come to her home. She further stated that trouble started when the respondent wanted to sell the plot known as Bahati/Engoshura Block 3/xxx (PEXB 2) where they live. She added that they bought the suit property as a family and had lived in it for 25 years. However, her name was not on the title deed since the respondent was holding it in trust.
 9. She told the court that she was the 1st respondent in Nakuru ELC Misc. Application number E011 of 2022 where Ombwayo J directed that the parties move this court on distribution of matrimonial property. She urged the court to give the suit property to her.
 10. In cross-examination, she stated that she had no marriage certificate and that only customary introduction was done. She confirmed that she resided in the suit property together with two of her children. She stated that she registered a caution when the respondent wanted to sell the suit property and that he was not living in the said property. She confirmed that the respondent had a stroke and that she did not want her children to be disinherited. She further stated that she had no documents how she had assisted the respondent in purchasing the suit property. She added that she had no issue with the respondent coming home.
 11. In re-examination, she stated that they had not registered their marriage.
 12. The respondent testified as DW1 and he adopted his replying affidavit as his evidence in chief. He stated that he owned the suit property and he had the sale agreement, title deed and certificate of ownership.



He further stated that he lived with the applicant from 2001-2008 when they disagreed and she left. He confirmed that he only sired two of their children and the other two came with the applicant. He added that the applicant together with the children had chased him away and he currently lived in a rented house despite him having built a house on the suit property. He confirmed that the applicant had placed a restriction on the suit property and he therefore wanted his land back since he had the right to develop it.

13. In cross-examination, he confirmed that he lived with the applicant since 1996 before she started her drama and that he bought the suit property in 1999 with his own money. He stated that the applicant never contributed to the purchase of the said property or the construction of the house and that at the time he was doing construction she never assisted him. He further stated that when he got a stroke in 2021 the applicant and her sons rejected him. He added that he owned a hardware and had only had workers and not another wife but rather a woman (Mercy Waithera) who takes care of him.
14. He stated that the applicant never visited him while he was in hospital and he wanted to be allowed to access his “boma” since a few of his items had been left there. He also stated that their children were adults and all he wanted the court to do is to divide the suit property so that they part ways.
15. In re-examination, he stated that him and the applicant were not legally married.
16. The application was canvassed by way of written submissions.

Applicant’s submissions

17. These were filed by Bitok & Company Advocates and are dated 22nd May 2025. Counsel gave brief facts of the case and identified five issues for determination by this court.
18. The first issue is whether the applicant and the respondent are married under Kikuyu Customary Law. Counsel submitted that the principles to be considered in matters of customary marriage were set out in the decision in *MWK v AMW* [2017] eKLR. He stated that the said principles had been partially met in the marriage between the applicant and the respondent. Thus, the court should find that they were married under customary law.
19. The second issue is whether the property known as L.R Bahati/Engorusha Block 3/xxx forms part of the matrimonial property. Counsel submitted that both parties and their children were utilizing the said property as a family home and the same was bought after the applicant and respondent got married. Thus, it formed part of the matrimonial property. He placed reliance on section 6 of the [*Matrimonial Property Act*](#) and the decision in *LMN v MWM* [2021] eKLR which quoted the case of *TMV, FMC* [2018] eKLR, where Nyakundi J. stated that: “.....Basically for property to qualify as matrimonial property, it ought to have been acquired during the subsistence of the marriage between the parties unless otherwise agreed between them that such property would not form part of matrimonial property.”
20. The third issue is whether the property should be registered in both their names. Counsel submitted that since there were no divorce proceedings pending between the parties herein and there being a risk of the respondent disposing of the suit property it was prudent that the same be registered in their joint names.
21. The fourth issue is whether a permanent injunction should issue against the defendant, his agents or servants from dealing with the suit property. Counsel submitted that it was clear from the pleadings that the respondent wanted to deal with the subject matter of the suit without consent from the applicant. She stated that if the same was to be executed, her and her children would suffer irreparable harm and loss. Thus, it was necessary and in the interest of justice that this court grants the orders



sought in the originating summons. The court's attention was drawn to the decision in INN v NK [2020] eKLR which quoted the case of Kenya Power & Lighting Co. Limited v Sheriff Molana Habib [2018] eKLR wherein the court held that:

“...A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected. A permanent injunction is different from a temporary/interim injunction since a temporary injunction is only meant to be in force for a specified time or until the issuance of further orders from the court. Interim injunctions are normally meant to protect the subject matter of the suit as the court hears the parties...”

22. The last issue is whether this honourable court ought to issue costs. Counsel urged the court to exercise its discretion and grant costs to the applicant.

Respondent's submissions

23. The respondent filed two sets of submissions, the first one is dated 19th April 2023 and was filed by Gatonye & Gatonye Advocates. Counsel gave a brief background of the case and identified three issues for determination.

24. The first issue is whether the applicant has made out a case warranting grant of an injunction. Counsel submitted that the first and second conditions to be met in order for grant of injunction orders had not been met in this cause. He placed reliance on the Nguruman Limited v Jane Bonde Nielsen and 2 Others [2014] eKLR as cited with approval in Family Bank Limited v Tassels Enterprises Limited & 2 others [2021] eKLR where the court reiterated the settled principles in Giella v Cassman Brown Co. Ltd [1973] E.A further holding as follows;

“These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. 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”

25. The second issue on what appropriate orders should be issued, counsel submitted that there was delay in filing this cause and therefore the applicant was guilty of laches. Thus, an injunction being an equitable remedy, this court should invoke the maxim “equity aids the vigilant, not the indolent” in declining to grant an injunction herein.
26. On who should bear costs of the application, counsel cited section 27 of the Civil Procedure Act and submitted that costs follow the event. He urged the court to grant costs to the respondent.
27. In the submissions dated 19th May 2025 filed by M/s Omondi Odegi & Company Advocates, counsel affirmed the contents of the earlier submissions and urged the court to dismiss the originating summons with costs to the respondent.

Analysis and determination

28. I have considered the summons, the affidavits, the evidence on record and the submissions by both parties. I opine that the issues for determination are as follows;



- i. Whether the property known as L.R Bahati/Engorusha Block 3/xxx constitutes matrimonial property.
- ii. Whether this court should issue an order of permanent injunction restraining the defendant, his agent and/or servants from interfering with the property known as L.R Bahati/Engorusha Block 3/xxx.

Whether the property known as L.R Bahati/Engorusha Block 3/xxx constitutes matrimonial property.

29. Section 6(1) of the Matrimonial Properties Act 2013 defines ‘matrimonial property’ as follows: -

“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.
- c. Any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.”

30. Under Section 2 of the Act, ‘Matrimonial home’ has been defined as:-

“any property that is owned or leased by one or both spouses and occupied or utilized by the spouses as their family home, and includes any other attached property.”

31. Further, section 14 of the Act provides as follows:

“Where matrimonial property is acquired during marriage-

- a. In the name of one spouse, there shall be a rebuttable presumption that the property is held in trust for the other spouse; and
- b. In the names of the spouses jointly, there shall be rebuttable presumption that their beneficial interests in the matrimonial property are equal.”

32. In *TMV vs FMC* (2018) eKLR, the Court stated that;

“...for property to qualify as matrimonial property, it ought to have been acquired during the subsistence of the marriage between the parties unless otherwise agreed between them that such property would not form part of matrimonial property.”

33. It is not disputed that the plaintiff and the defendant once lived as husband and wife. They bore four children together all of whom are now adults as evidenced by their birth certificates (PEXB 1a-d). It is also not in dispute that they are now separated and the plaintiff lives on the suit property LR Bahati/Engorusha block 3/xxx while the defendant resides elsewhere. The plaintiff claims to have been married to the defendant in 1994 while the defendant stated that they met in 1996 and lived together as husband and wife. From the evidence on record it is clear that the transactions for purchase of the suit property began in the year 1999 when the parties were living together as husband and wife. Thereafter, a title deed was issued on 7th March 2001 when the parties herein were still living together as evidenced by the material on record.



34. Both the plaintiff and the defendant confirmed that in the suit property there is a matrimonial home where they lived together as husband and wife and raised their children before their separation. It is not disputed by the defendant that the suit property even though registered in his name was purchased while they were living together as husband and wife. Therefore, in terms of Section 6(1) (a) of the Matrimonial Property Act, I find that this LR Bahati /Engorusha block 3/xxx is matrimonial property.

Whether this court should issue an order of permanent injunction restraining the defendant, his agent and/or servants from interfering with the property known as L.R Bahati/Engorusha Block 3/xxx.

35. The plaintiff also sought for a permanent injunction. In *Bandari Investments & Co. Ltd v Martin Chiponda & 139 others* [2022] eKLR the Court held as follows;

“ 38. Whether the 1st and 18th Defendants are entitled to be granted the Permanent Injunction restraining the Plaintiff on the suit property. Unlike Temporary Injunctions which are granted only to be in force for a specified time or until the issuance of further orders from Court, Permanent Injunctions are rather different, in that they are perpetual and issued after a Suit has been heard and finally determined.

Permanent Injunction fully determines the right of the Parties before the Court and is normally meant to perpetually restrain the commission of an act by the Plaintiff in order for the rights of the Plaintiff to be protected. This Court has the powers to grant the Permanent Injunction under Sections 1A, 3 & 3 A of the Civil Procedure Code, 2010 if it feels the right of a Party has been infringed, violated and/or threatened as the Court cannot just seat, wait and watch under these given circumstances.” (Emphasis mine)

36. Upon considering the facts of this case, the law and the above cited authority I find that the defendant’s attempt to dispose of the suit property LR Bahati/Engorusha block 3/xxx which is matrimonial property will infringe on the plaintiff’s property, rights. The defendant does not deny his intention to sell the suit property for his own personal gain. This court has the powers to grant the permanent injunction sought under sections 1A, 3 & 3A of the Civil Procedure Act 2010, if it finds that the right of a party has been infringed, violated and/or threatened as is the case here. I therefore find it just to grant the prayer for permanent injunction against the defendant.

37. The upshot is that the Originating Summons dated 21st November, 2022 is allowed as prayed.

38. This being a family matter I order each party to bear his/her own costs.

39. Orders accordingly.

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 30TH DAY OF OCTOBER, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG’UDI

JUDGE

