



**AHF v AL-CM (Family Originating Summons E066 of 2024)
[2025] KEHC 17262 (KLR) (Family) (25 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17262 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

FAMILY ORIGINATING SUMMONS E066 OF 2024

EKO OGOLA, J

NOVEMBER 25, 2025

**IN THE MATTER OF SECTION 17 OF THE MATRIMONIAL
PROPERTY ACT NO. 49 OF 2013**

BETWEEN

AHF APPLICANT

AND

AL-CM RESPONDENT

RULING

1. Before this court is an application dated 7th October 2024 seeking the following orders:

1. Spent

2. That pending the hearing and determination of the Originating Summons filed in Divorce Case No. 416 of 2023 filed in Istanbul, Republic of Turkey: Abdi Hassan Farah vs. Aline Marie – Claire Mutagorama (hereinafter, “the Divorce Case”), the Respondent by herself, her servants, agents, employees and or by whomsoever be restrained from alienating, transferring, selling, giving in exchange, mortgaging, solely receiving rental income from the under-listed properties and or otherwise encumbering or in any manner whatsoever disposing of or dealing with the following jointly owned suit properties:

- a. Apartment No. B7 situated on L.R No. 205 139 (Original No. 205 64) – Nairobi Kenya;
- b. Apartment No. c10 situated on L.R No. 205 64 (Original No. 205 64 6 7) – Nairobi Kenya;



- c. Villa 21 situated on L.R No. 31772 (Original No. 20116) – Almasi, Ridgeways, Nairobi Kenya;
 - d. Apartment No. D4 situated on L.R No. 1870 111 360 (Original No. 179 3) – Richmond Heights, Westlands, Nairobi Kenya;
 3. That pending the hearing and determination of the Divorce Case, the suit properties be preserved.
 4. That pending the hearing and determination of the Divorce Case, this Court to pleased to issue an order directing that all future rental income from the suit property be deposited in an escrow account opened and held in the name of the Parties’ advocates for the benefit of all the parties.
 5. That cost of this application be borne by the Respondent.
2. The application is anchored on the following grounds:
- a. That the above listed suit properties were acquired through joint funds and efforts of the Applicant and the Respondent during the subsistence of the marriage.
 - b. That owing to the souring of their relationship and subsequent institution of Divorce proceedings vide Divorce Case No. 416 of 2023 filed in Istanbul, Republic of Turkey – Abdi Hassan Farah vs. Aline Marie-Claire Mutagorama, the Respondent continues to deny the Applicant access to the rental management of the suit properties and has since diverted all the savings and the past and present rental incomes that was previously paid into joint Bank accounts held at the Kenya Commercial Bank in the Republic of Kenya and United Nations Federal Credit Union in the United States of America, into a separate unknown account that the Applicant has no access to.
 - c. That the Respondent is capable of taking unilateral decisions involving the suit properties in question.
 - d. That the applicant is fearful that the Respondent may dispose of the properties without seeking the Applicant’s concurrence as a joint beneficial owner of the suit properties.
 - e. That it will therefore be just, mete and in the interest of Justice that this court grants the orders sought in the application herein as the Applicant stands to suffer irreparable injury whereas he has a prima facie case against the Respondent with high chances of success.
3. The Application supported by the affidavit of Abdi Hassan Farah dated 7th October, 2024 which reiterates the grounds on which the application is made and further deposed that the Divorce Case was set to be heard in January 2025.

The Respondents’ Case

4. The Respondent filed a Replying Affidavit dated 18th December 2024, in which she deposed that the remedies sought in prayers 3 and 4 seek a declaration of entitlement of rental income pointing towards division of matrimonial property, which remedy is not available until after divorce which is pending, thus the prayers are premature.
5. She further deposed that the Applicant’s apprehension is baseless because the suit properties are registered in both names and Kenyan Law demands a spouse’s consent before disposal.



6. She contended that the Applicant did not contribute to the purchase of Apartment No. D4 in Richmond Heights Westlands.
7. Further, she deposed that the applicant has failed to provide upkeep for their three children since January 2022 leaving her with a financial burden, and has since moved on to a new partner, and denied her access to her personal effects.
8. She conceded to operating two joint Bank accounts at KCB Bank, one in Kenya Shillings and the other in USD.
9. She explained that as from August 2022, the dependency status of the children of the marriage changed from the Applicant to herself warranting her to open a rental account to preserve the funds and insulate the children.
10. She further denied the amount quoted by the applicant and any plans to dispose the suit properties, contending that the applicant could register cautions and restrictions.
11. She further deposed that the Applicant had made similar claims in the Divorce proceedings which duplicity is an abuse of court process. She thus urged the court to dismiss the application with costs.

Applicant's Response

12. The Applicant filed a Supplementary Affidavit and Grounds of opposition in response, both dated 24th February 2025. He deposed that when the current application was partly canvassed in Court on 28th November 2024, the Court directed the Respondent to file a Replying affidavit giving an accurate account of the rental income generated from the jointly owned properties as well as funds withdrawn from their joint accounts but the Defendant had not complied.
13. He further deposed that the Defendant has raised issues of alimony, child maintenance and family expenses which had already been dealt with in the Divorce case.
14. He contended that this court is not clothed with the Requisite jurisdiction to hear any issues of contribution to the property as the Divorce case is still pending, but has jurisdiction to issue preservation orders as sought.
15. He further deposed that he and the Defendant have not been using income generated from the suit properties for family upkeep and education as the same is covered from other sources, thus the Defendant's actions are unjustified.
16. Further, he contended that the Defendant had not tabled any evidence to show that she would be prejudiced if the prayers sought are granted.

Determination

17. Having considered the application before me, the Replying affidavits and the submissions filed herein, I find two issues for determination;
 1. Whether the Court has jurisdiction to grant the prayers sought?
 2. Whether the applicant has met the threshold for a grant of preservation orders over the suit property.
18. The current application is brought under Section 17 of the *akn ke act 2013 49 Matrimonial Property Act* which provides:



17. Action for declaration of rights to property
- (1) A person may apply to a court for a declaration of rights to any property that is contested between that person and a spouse or a former spouse of the person.
 - (2) An application under subsection (1)—
 - (a) shall be made in accordance with such procedure as may be prescribed;
 - (b) may be made as part of a petition in a matrimonial cause; and
 - (c) may be made notwithstanding that a petition has not been filed under any law relating to matrimonial causes.
19. Neither of the parties refute that the suit properties are Matrimonial property as defined by Section 6(1) of the *akn ke act 2013 49 Matrimonial Property Act* which provides:
- “or 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; or
 - (c) any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.”
20. In the case of *AKK v PKW [2020] KECA 335 (KLR)* the Court of Appeal held:
- “A plain reading of Section 17 enables a spouse, subsistence of a marriage notwithstanding, to make an application for declaratory orders. It further states that that application may be made as part of a petition in a matrimonial cause and notwithstanding that a petition has not been filed under any law relating to matrimonial causes. It is our opinion that the divorce cause does not prevent a party from bringing an action for declaration of rights to property in the High Court under Section 17 of the Act. . . . The above case demonstrates that a declaration under Section 17 of the Act is not necessarily pegged on the subsistence of a marriage. The effect of this section is that the court can make a declaration with regard to the suit property even though the parties are still married or pending divorce. It is our considered view that the High Court has jurisdiction to declare the rights of parties in relation to any matrimonial property which is contested. However, by virtue of Section 7, the High court cannot divide matrimonial property between spouses until their divorce or their marriage is otherwise dissolved. We find that the trial court was clothed with the requisite jurisdiction to entertain those aspects of the appellant’s prayers that did not involve the division of matrimonial property and the superior court was in error to limit its jurisdiction on the basis of the provisions of Section 7 of the Act.”
21. All the suit properties are jointly registered and were acquired during the subsistence of the marriage.
22. As per section 17 of the *akn ke act 2013 49 Matrimonial property Act*, the Plaintiff Applicant is within his rights to apply to this Court for a declaration of rights between him and his spouse, notwithstanding that the Divorce case is still pending in Court. The marriage need not already be dissolved for the Court to preserve the subject matrimonial property. Further, the application does not seek any determination on contribution and division and as such, this court has full jurisdiction to hear and determine the application.



23. On the Question of whether the prayers sought may be granted, the Applicant has demonstrated that indeed, he and the Defendant acquired property and opened joint Bank accounts during the subsistence of their marriage. The Defendant has admitted to channeling the rental income and funds in their joint accounts elsewhere to meet other needs of the family. As the matter before me does not concern the division of the matrimonial property or maintenance of the family, I shall not look into those issues.
24. Section 4(a) of the *Kenya Matrimonial Property Act 2013* stipulates the equality of spouses as follows:
- Despite any other law, a married woman has the same rights as a married man—
- (a) to acquire, administer, hold, control, use and dispose of property whether movable or immovable;
25. Both the Applicant and Respondent hold equal rights to administer, hold, control, use and dispose of property of the marriage. Based on this Principle, it is only just that the Respondent give an account of the funds used and diverted without the consent of the Applicant, and the property be preserved until it is rightfully divided. I thus allow the prayers as sought in the application dated 7th October 2024.
26. I therefore make the following order;
1. That pending the hearing and determination of the Originating Summons filed in Divorce Case No. 416 of 2023 filed in Istanbul, Republic of Turkey: Abdi Hassan Farah vs. Aline Marie – Claire Mutagorama (hereinafter, “the Divorce Case”), the Respondent by herself, her servants, agents, employees and or by whomsoever are hereby restrained from alienating, transferring, selling, giving in exchange, mortgaging, solely receiving rental income from the under-listed properties and or otherwise encumbering or in any manner whatsoever disposing of or dealing with the following jointly owned suit properties:
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 - c. Villa 21 situated on L.R No. 31772 (Original No. 20116) – Almasi, Ridgeways, Nairobi Kenya;
 - d. Apartment No. D4 situated on L.R No. 1870 111 360 (Original No. 179 3) – Richmond Heights, Westlands, Nairobi Kenya;
 2. In the meantime, I order and direct that all future rental income from the suit properties be deposited in an escrow account opened and held in the name of the Parties’ advocates for the benefit of all the parties, pending the determination of the Aforesaid Divorce Cause.
 3. Costs in the cause.
- It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 25th Day Of , 2025.

E.K OGOLLA

JUDGE



In the presence of:

Mr. Wachana..... for the Applicant

Ms Kareithi..... for the Respondent

Gisiele Mohamed..... Court Assistant

