



REPUBLIC OF KENYA



KENYA LAW
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**BMS v JWM (Matrimonial Case E009 of 2025)
[2025] KEHC 18325 (KLR) (4 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18325 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MATRIMONIAL CASE E009 OF 2025
FN MUCHEMI, J
DECEMBER 4, 2025**

BETWEEN

BMS PETITIONER

AND

JWM RESPONDENT

RULING

1. The application for determination dated 23rd July 2025 seeks for orders of injunction restraining the respondent from selling or dealing in any manner, LR. Nos.Ruiru/Mugutha/10798, Ruiru EAST 1/3796, Ruiru/Mugutha/1/7747, Ruiru KIU 2/20485 and Bridgeview Apartments Block C, House 9 pending the hearing and determination of the petition dated 23rd July 2025. The applicant further seeks for orders of access to Ruiru/Mugutha/10798 to retrieve his personal belongings and further that Clement Ndung'u t/a Pecle Investment be restrained from managing or collecting rent from Ruiru/Mugutha/10798. The applicant prays that a court appointed administrator be appointed to manage rental properties and deposit income into an interest earning bank account.
2. In opposition to the application, the respondent filed a Replied Affidavit dated 21st August 2025.

The Applicant's case

3. The applicant states that he married the respondent in July 2003 after cohabiting with her since the year 2000 and they were blessed with three issues. The applicant further states that he worked as a Sales Manager and was the breadwinner until 2007. Further, they acquired matrimonial property being land parcels Ruiru/Mugutha/10798 (matrimonial home), Ruiru EAST 1/3796 (rentals), Ruiru/Mugutha/1/7747 (sold without consent), Ruiru KIU 2/20485 (sold without consent) and Bridgeview Apartment Block C House 9.
4. The applicant avers that they lived in the matrimonial home since 2010 until their separation in 2021 when he moved out. The applicant states that in 2022, the respondent rented the house, to a third party



through Pecle Investment, without his knowledge and denied him access to his belongings. Further, he has not received any rental income or share of proceeds from the sold properties. The applicant further states that the respondent has sold and transferred land parcels Ruiru/Mugutha/1/7747 and Ruiru KIU 2/20485 without his consent.

The Respondent's Case

5. The respondent states that she and the applicant began cohabiting in 2001 and got married in the year 2003 whereby they were blessed with three issues. The respondent states that the applicant was not the sole breadwinner until 2007 as alleged for she had consistent income from short term contracts with AMREF between 2001 and 2006 and was also providing for the family. The respondent states that they could not agree on finances after the applicant in the year 2006 withdrew a sum of Kshs. 221,000/- from their joint savings account which money was meant for acquiring a home but he used the money to start his own business.
6. The respondent avers that she then gave up on investing with the applicant and she began investing on her own using loans, her income and savings. The respondent further states that she purchased land parcel Ruiru/Mugutha BLOCK 1/T.10768 on 16th June 2007 from one Stephen Kinya t/a Wakinya Land & Property Agencies for Kshs. 350,000/- vide a sale agreement dated 16th June 2007. The entire purchase price was financed by AMREF Sacco where she was employed as a Project Assistant and the loan was repaid through her salary.
7. The respondent states that at the time of purchase, the property was unsurveyed and constituted half quarter acre plots under Ballot No. 344 issued by Nyakinyua Investments Ltd labelled "344B". Upon the purchase, she was registered as a joint proprietor of Ballot No. 344 together with Mr. Ambrose Gichohi labelled as "344A" to facilitate processing of a title deed which was processed in their joint names on 7th March 2016. Thereafter, the respondent states that she partitioned the property to enable processing of individual title deeds which were subsequently issued in her names as title Ruiru/Mugutha BLOCK 1/T.10768.
8. The respondent states that in mid 2009, she took a loan from AMREF Sacco of Kshs. 1 million and started developing the said property to a residential house where she moved with the children in the year 2010 when it was not complete to cut down on costs. the respondent further states that she refinanced the loan with Kshs. 200,000/- in December 2009 and Kshs. 750,000/- in April 2011. She further withdrew savings from her pension scheme in April 2012 upon leaving AMREF in late August 2011. The respondent avers that due to financial constraints, she constructed the house in phases from July 2009 and completed in 2012. She further avers that she has been solely paying rates for the same.
9. The respondent states that she purchased land parcel Ruiru EAST BLOCK 1(GITHUNGURI)/3796 from a colleague one Catherine Wambui Gichimu on 28th March 2014 for Kshs. 1,500,000/- financed by a loan from KIMISITU Sacco on 5th March 2014. She repaid the loan using her salary at Management Sciences for Health (MSH). In the year 2015, she decided to construct an assortment of residential houses for letting out which she financed using her salary, allowances at MSH where she worked as a Senior Monitoring and Evaluation Advisor, Safaricom Foundation where she worked for 5 months as principal monitoring evaluation & reporting, John Snow Incorporation (JSI) as monitoring & Evaluation Manager & Senior Regional Manager and later Population Services International (PSI) as Evidence Advisor, Adolescents 260 (A360) and Regional Monitoring Advisor Eastern Africa. The respondent further states that she also secured consultancy engagements with FANRPAN on 17th May 2015, JSI on 1st April 2019, UNDP on 9th August 2019 and DREAMS on 15th March 2019 during which she earned fees. She further withdrew her pension scheme savings from ICEA Lion Group



- Insurance upon exiting employment from MSH in 2016 thereafter BRITAM Insurance upon exiting employment from JSI on 2019 and her Sacco shares from Safaricom.
10. The respondent states that for 6 ½ years she was not servicing any loan and hence she was able to use all the money she earned from salary, allowances, benefits, consultancy fees to finance construction of the property. However, in 2021, she took a loan of Kshs 5 million from Standard Chartered Bank to enable her complete the interior finishing of the building with a repayment period of 60 months at the rate of Kshs. 115,049/- monthly.
 11. The respondent states that she purchased LR No. Ruiru/KIU BLOCK 2/20485 from Makaoplus Properties Ltd on 15th August 2018 for Kshs. 2.9 million paid in four instalments through her salary and savings. In the year 2022, she sold the property to Japheth Kaeke Musyoka for Kshs. 4,050,000/- which she paid for her second born child's fees, living expenses and other school related expenses at Thompson Rivers University in Canada where she had secured admission to pursue a course in Bachelor of Computing Science for a period of four years from 6th September 2022 until 31st December 2026. The respondent states that she still pays school fees for her second born child singlehandedly and her younger daughter without any assistance from the applicant.
 12. The respondent states that she purchased land parcel Ruiru/Mugutha 1/7747 alongside Ruiru/Mugutha BLOCK 1/3796 from her work colleague at Kshs. 850,000/- using Kimisitu Sacco loan and a soft loan of Kshs. 310,000/- from a colleague. She later sold the property for Kshs. 2,500,000/- which she utilized to develop land parcel Ruiru/Mugutha BLOCK 1/3796.
 13. The respondent avers that land parcels Ruiru/Mugutha BLOCK 1/T.10768 and Ruiru EAST BLOCK 1/3796 are not matrimonial properties whereas Ruiru KIU BLOCK 2/20485 and Ruiru/Mugutha BLOCK 1/7747 were long disposed of and belong to third parties. Further the respondent avers that properties Ruiru/Mugutha BLOCK 1/T.10798 and BRIDGEVIEW Apartment Block C House 9 are not known to her.
 14. The respondent states that the applicant has never contributed directly financially or through domestic labour to acquire and improve her properties yet he was holding permanent and pensionable positions in KCC and Telkom/orange with very robust business ventures earning him millions. He had his multimillion parallel investments and profitable businesses, telecommunications dealership and agribusiness, national stocks exchange, government bonds, Uriithi housing cooperative society ltd, Nasifu Sacco and pension scheme in Telkom but he never contributed to her business and investments.
 15. The respondent avers that the applicant has lived away from the matrimonial home since separation in 2007 which was necessitated by the disagreements on the part of the applicant for creating an atmosphere of collision and animosity within the marriage which made her commence divorce proceedings in Nairobi MCDC 39 of 2007 on grounds of cruelty and harassment which she could not pursue to completion due to limitation of funds. The respondent avers that there was no agreement requiring the applicant to move out of the alleged matrimonial home as alleged.
 16. The respondent states that in the year 2022, she leased the matrimonial home to Mercy Borges and rented a house along Ngong Road to be near and close to Strathmore University where her first born son was schooling so that she could live with him.
 17. The applicant filed a Supplementary Affidavit dated 10th November 2025 and states that although the respondent had short term contracts with AMREF, her income from the said contracts was irregular and insufficient to solely support the family during that period. The applicant avers that he was employed in permanent and pensionable positions and bore the family responsibility for the family's welfare including school fees, food, clothing and other necessities.



18. The applicant states that the withdrawal of Kshs. 221,000/- from National Bank of Kenya was made with the respondent's knowledge and after consultations between them. Furthermore, the funds were used to establish a business that would generate additional income for the family benefit.
19. The applicant argues that land parcel Ruiru/Mugutha BLOCK 1/T.10768 is matrimonial property and not the respondent's sole property. Although she took a loan from AMREF Sacco, the applicant avers that he made substantial contributions towards the development of the property both financially and non financially. The applicant further states that the property transactions during their marriage involved complex arrangements and the final title in the respondent's sole name does not negate his contributions and rights under the [Matrimonial Property Act](#).
20. The applicant states that although the respondent obtained financing from Kimisitu Sacco, land PARCEL Ruiru EAST BLOCK 1/3796 was acquired during the subsistence of their marriage and he contributed to the family's general welfare enabling the respondent to service the loan and develop the property. Further, the development of rental apartments from 2015 – 2022 occurred during their marriage and he supported that venture through contributions to the family welfare.
21. The applicant states that the respondent sold land parcel Ruiru/KIU BLOCK 2/20485 in 2022 without his consent despite the fact that the property was acquired during their marriage in 2018. The applicant argues that while he acknowledges that the proceeds were used for his daughter's education, he was entitled to be consulted on such a major decision and thus he is entitled to compensation for his share of the property.
22. The applicant avers that while he was employed by KCC and Telkom/Orange, his income was used primarily to support the family. Furthermore, although his employment circumstances changed over time, including his dismissal from Telkom in December 2018, any investments he made were modest compared to the properties acquired by the respondent using income earned during their marriage.
23. The applicant argues that he was not consulted about the respondent's leasing their matrimonial home. Furthermore, he has not received any share of the rental income and he has been denied access to retrieve his personal belongings.
24. Parties disposed of the application by way of written submissions.

The Applicant's Submissions

25. The applicant submits that the suit properties are matrimonial property pursuant to Section 6 of the [Matrimonial Property Act](#).

The applicant further refers to the cases of *RNM vs GNM* [2014] eKLR; *CWW vs PWW* [2015] eKLR; *MMW vs PNM* [2013] eKLR; *TKK vs EKK* [2016] eKLR; *Alice Wanjiru Kibara vs James Kariuki Kibara* [2015] eKLR; *PMM vs JMN* [2014] eKLR; *EWK vs BWK* [2018] eKLR and *GMK vs DWN* [2015] eKLR and submits that the said properties were acquired during the subsistence of their marriage to which he contributed by providing financial support and through his contributions to the family welfare and stability. The applicant further argues that pursuant to Section 14 of the [Matrimonial Properties Act](#), although some of the suit properties are under the name of the respondent, she holds them in trust for himself as they are matrimonial property.

The Respondent's Submissions

26. The respondent refers to the cases of *Giella vs Cassman Brown & Co Ltd* (no citation given); [Mrao Ltd vs First American Bank of Kenya & 2 Others](#) (2003) KLR 125 and [Paul Gitonga Wanjau vs Gathuthi](#)



Tea Factory Company Ltd & 2 Others (2016) eKLR and submits that the applicant has not established a prima facie case.

27. Relying on the case of *Nguruman Ltd vs Jan Bonde Nielsen & 2 Others* (2014) eKLR, the respondent argues that the applicant has not shown any evidence to prove his contribution to the suit properties and further the court cannot at the current stage confirm the ownership status of some of the suit properties. The respondent further submits that the applicant has failed to show that the balance of convenience tilts in his favour in granting the injunction.

The Law

Whether the applicant has met the requisite conditions to warrant the granting of a temporary injunction

28. It is important to clarify the issue of the dissolution of marriage of the parties for the reason that the respondent indicated in her submissions that the divorce case was still pending at Milimani courts. It is noted the applicant has produced a decree nisi absolute dated 12/08/2023 to his list of documents. As such, it is clear that the marriage between the parties was dissolved on 12th August 2023 in Ruiru Principal Magistrate Divorce Cause No.E011 of 2023. As such, this cause is properly before the court.
29. The principles of interlocutory injunction are now well settled. Those principles were set out in *East African Industries vs Trufoods* [1972]EA 420 and *Giella vs Cassman Brown & Co. Ltd* [1973]EA 358. Restating the said principles, Ringera J, (as he then was) in *Airland Tours & Travel Limited v National Industrial Credit Bank Nairobi* (Milimani) HCCC No. 1234 of 2002 set them out as follows:-
- a. A prima facie case with a probability of success at trial;
 - b. The applicant is likely to suffer an injury, which cannot be adequately compensated in damages;
 - c. If the court is in doubt about the existence or otherwise of a prima facie case it should decide the application on a balance of convenience;
 - d. The conduct of the applicant meets the approval of the court of equity.
30. Similarly in *Dr. Simon Waibaro Chege vs Paramount Bank of Kenya Ltd* Nairobi (Milimani) HCCC No. 360 of 2001, Ringera J, (as he then was) held:-

“The remedy of injunction is one of the greatest equitable relief. It will issue in appropriate cases to protect the legal and equitable rights of a party to litigation, which have been, or are being or are likely to be violated by the adversary. To benefit from the remedy, at an interlocutory stage, the applicant must, in the first instance show that he has a prima facie case with a probability of success at the trial. If the court is in doubt as to the existence of such a case, it should decide the application on a balance of convenience. And because of its origin and foundation in the equity stream of the jurisdiction of the courts of judicature, the applicant is normally required to show that damages would not be an adequate remedy for the injury suffered or likely to be suffered if he is to obtain an interlocutory injunction. As the relief is equitable in origin, it is discretionary in application and will not issue to a party whose conduct as pertains to the subject matter of the suit does not meet the approval of the eye of equity.”



A prima facie case with a probability of success at trial

31. What then constitutes a prima facie case? In the case of *Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others* [2003] KLR 125,

“The principles which guide the court in deciding whether or not

to grant an interlocutory injunction are, first, an applicant must show prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless an applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience....A mere scintilla of evidence can never be enough; nor can any amount of worthless discredited evidence. It is true that the court is not required at that stage to decide finally whether the evidence is worthy of credit, or whether if believed it is weighty enough to prove the case conclusively: that final determination can only properly be made when the case for the defence has been heard. It may not be easy to define what is meant by “prima facie case” but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence...The terms “prima facie” case, and “genuine and arguable” case do not necessarily mean the same thing, for in using another term, namely a suitable cause of action, the words “prima facie” are frequently used to refer to a case which shifts the evidential burden of proof, rather than as giving rise to a legal burden of proof in the manner of considering, which was in relation to the pleadings that had been put forward in the case. It would be in the appellant’s interest to adopt a genuine and arguable case standard rather than one of prima facie case, the former being the lesser standard of the two...In civil cases a prima facie case is a case in which on the material presented to the court a tribunal properly directing itself will conclude that there exists a right which has apparently being infringed by the opposite party to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant’s case upon trial. That is clearly, a standard, which is higher than an arguable case.”

32. The applicant argues that land parcels Ruiru/Mugutha/10798, Ruiru EAST 1/3796, Ruiru/Mugutha/1/7747, Ruiru KIU 2/20485 and Bridgeview Apartment Block C House 9 are matrimonial properties as they were acquired during the subsistence of the marriage and he made contributions towards them both monetarily and non monetarily. The respondent opposes the same and argues that the properties Ruiru EAST 1/3796, Ruiru/Mugutha/1/7747, Ruiru KIU 2/20485 are not matrimonial properties but she acquired them solely using her salary, allowances and loans from employment and that she is not aware of properties Ruiru/Mugutha/10798 and Bridgeview Apartment Block C House 9.
33. Section 6 of the *Matrimonial Property Act* 2013, defines matrimonial property to include the matrimonial home or homes, any household goods in the home or homes or any other property jointly owned and acquired during the subsistence of the marriage.
34. At this juncture it is evident that as the parties were married and lived as a couple they both contributed to their marriage in their own respective ways. During the pendency of the marriage both parties acquired certain rights which this court must protect pending the hearing and determination of the divorce and the distribution of the property they may have acquired upon proof of individual contribution towards its acquisition. The applicant has sought for injunctive orders based on the



fact that he contributed to the acquisition of the suit properties and they are all registered under the name of the respondent however the respondent has sold some of the properties and rents out one of the properties and he has not received any money from the respondent. From the record, it is clear that the issue of contribution cannot be determined at this interlocutory stage and would need to be ventilated at trial because both parties seem to have contributed in the marriage. It is prudent for the court to ventilate the same during the trial. It is therefore my considered opinion that the applicant has established a prima facie case.

Irreparable Injury

35. In *Paul Gitonga Wanjau vs Gathuthi Tea Factory Company Ltd & 2 Others* [2016]eKLR the court considered *Halsbury's Laws of England* on what irreparable loss is and stated that:-

“First, that the injury is irreparable and second, that it is continuous. By the term irreparable injury is meant injury which is substantial and could never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired and the fact that the plaintiff may have a right to recover damages is no objection to the exercise of the jurisdiction by injunction, if his rights cannot be adequately protected or vindicated by damages.”

36. Therefore, has the applicant demonstrated that he will suffer irreparable loss unless the injunction is granted, which loss would not adequately be compensated by an award of damages? The applicant submits that he is apprehensive since the suit properties are in the name of the respondent and she has sold some of them without due regard to his interests. The respondent has not refuted that she has sold some of the suit properties but has argued that she sold the same as she acquired them solely. It is therefore my considered view that the fact that the properties are listed in the respondent's name solely poses a threat in the event the court finds that the properties are matrimonial properties and the applicant stands to lose out. I am therefore satisfied that the applicant may suffer irreparable injury which would not be adequately compensated by way of damages.

Balance of Convenience Test

37. In the case of *Pius Kipchirchir Kogo vs Frank Kimeli Tenai* [2018] eKLR, the court in dealing with the issue on balance of convenience held as follows:-

The meaning of balance of convenience in favour of the plaintiff is that if the injunction is not granted and the suit is ultimately decided in favour of the plaintiffs, the inconvenience to the plaintiff would be greater than that which would be caused to the defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the plaintiffs to show that the inconvenience caused to them would be greater than that which may be caused to the defendants. Should the inconvenience be equal, it is the plaintiffs who suffer? In other words, the plaintiffs have to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than which is likely to arise from granting it.

38. In light of the above, it is my considered opinion that the balance of convenience tilts in favour of the applicant because the inconvenience caused to him will be much greater than that caused to the respondent if the injunction is not granted in respect of preservation of the three properties listed in prayer No. 2.



39. It is not in dispute that the parties got married in 2003 and separated in 2007. For the last eighteen years, a lot of water has passed under the bridge and for the applicant to seek for orders of access to the matrimonial home to pick his personal belongings does not make sense. He did not give particulars of the personal belonging and if such an order is granted, it would cause unnecessary conflict between the parties in executing it. Similarly, the parties having lived apart for that long period and not been managing the rental properties together, it would be to the detriment of the respondent's peace and well being to bring in an agent to manage the rent collection of the said rental property. For the foregoing reasons, I hereby decline to grant prayers 3, 4 and 5 of the application dated 23rd July 2025 before hearing the main suit.
40. Consequently, I find that the applicant herein has met the threshold as set out in the case of *Giella v Cassman Brown* and therefore an injunction ought to issue in his favour. Consequently, the application dated 23rd July 2025 has merit and is hereby allowed in the following terms: -
- a. That an order of preservation do issue restraining the respondent from transferring, selling, alienating the following properties:-
- (i) Ruiru/Mugutha/10798
- (ii) Ruiru East 1/3796
- (iii) Bridge view Apartments Block House No.9
41. Being a family matter application, each party shall meet their own costs.
42. It is hereby so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 4TH DAY OF DECEMBER 2025.

F. MUCHEMI

JUDGE

