



**Mberi v Buchholz (Environment and Land Case E059 of 2025)
[2025] KEELC 8600 (KLR) (10 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8600 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE E059 OF 2025
SM KIBUNJA, J
DECEMBER 10, 2025**

BETWEEN

SHALETY WAGHANGA MBERI PLAINTIFF

AND

HARTMUT BUCHHOLZ DEFENDANT

RULING

1. The plaintiff moved the court through the application dated 21st May 2025, seeking orders inter alia that:
 - a. That a temporary injunction be issued restraining the defendant by himself, his servants and or his agents from evicting, demolishing, harassing and or interfering with the plaintiff's occupation of Subdivision Number 10596/11/MN (CR. 47295) and 10597/11/MN (CR.4796), Utange, Mombasa County, suit properties, pending the hearing and determination of the main suit.
 - b. That the house on the suit properties be sold, and the proceeds shared equally between the parties herein.
 - c. That the said house be valued and the defendant to pay the plaintiff half of the value.

The application is based on the three (3) grounds on its face and the affidavit of Shalety Wughanga Mberi, the plaintiff, who inter alia deposed that after staying with the defendant for over five years, they bought the suit properties that has a six bedroom mansionette, vide sale agreement dated 7th February 2025; that as the defendant is a Dutch national, and could not acquire the property in his name alone, he included the her in the transfer as joint owners; that after the acquisition of the said property, the defendant became violent towards her and wanted her out of her house; that the suit property was as at February 2025 valued Kshs.26,500,000 and should be sold and the proceeds shared between them or defendant to pay her half its value.



2. The application is opposed by the defendant through his replying affidavit sworn on 10th June 2025, in which he deposed inter alia that he is a German and not Dutch national and resides in Kenya, where he hopes to permanently settle and retire in; that the plaintiff has filed this suit as his wife and the issue of presumption of marriage falls outside the jurisdiction of this court; that he resides on the suit property that he bought using funds from his bank account in Germany in February 2025 and the plaintiff did not contribute in its purchase though he registered the land in their joint names; that the plaintiff holds the half share in the suit property in his trust; that the suit property and others that he solely funded in their acquisitions are matrimonial properties and ought to be distributed by the family division of the High Court, and the application should be dismissed with costs.
3. The learned counsel for the plaintiff and defendant filed their submissions dated the 26th August 2025 and 6th October 2025 respectively, that the court has considered.
4. The issues arising for the court's determinations are as follows:
 - a. Whether the plaintiff has met the threshold for the injunctive order sought to be issued.
 - b. Whether the orders of sale of the suit property and sharing of the proceeds thereof can issue at this interlocutory stage.
 - c. Who pays the costs?
5. The court has carefully considered the grounds on the notice of motion, affidavit evidence, submissions by the learned counsel, superior court decisions cited, and come to the following conclusions:
 - a. A perusal of the averments and prayers on the plaint herein dated 21st May 2025 show that the plaintiff is only seeking for two prayers. Prayer (a) is for permanent injunction to restrain the defendant from evicting, demolishing, harassing and or interfering with the plaintiff occupation of the suit property, while prayer (b) is for costs of this suit. The suit as pleaded in the plaint concerns the use and occupation of the suit property, which clearly falls under the jurisdiction of this court, in view of Article 162(2)(b) of *the Constitution* and section 13 of the *Environment and Land Court Act* No. 19 of 2011. The extensive submissions by the learned counsel for the defendant that jurisdiction rest with the High Court, though relevant to some of the prayers on the notice of motion, does not hold water in respect of the suit.
 - b. As can be observed in (a) above, there is no prayer for the sale of the suit property and equal sharing of the proceeds thereof on the plaint. Those prayers are sought through the notice of motion, and if the prayers for the sale of the suit property and sharing of the proceeds were to be granted at this stage, the main suit would be left frustrated as there would be no subject property that plaintiff would be seeking not to be evicted from or not to be demolished.
 - c. There appear to be no doubt that the plaintiff and defendant have been living as husband and wife, and that the suit property was purchased during the time of their cohabitation. It is also apparent that the funds for the purchase of the suit property were put forward by the defendant but both were registered as joint proprietors. From the facts so far presented, differences between the couple subsequently arose, and the plaintiff filed this suit and the application. It is important to point out that the court is not expected at this interlocutory stage to make any final determinations on the issues of facts and law as that has to wait for the parties to present their evidence during the main trial. However, as submitted by the defendant, this court has no jurisdiction to deal with determinations of marriage relationships as that is the mandate of the High Court. If the plaintiff fears being evicted from the suit property



that appears from their depositions to be where their matrimonial home is situated, then the appropriate application should be made before the High Court.

- d. It follows that the plaintiff has failed to establish a prima facie case with a probability of success, or that she will suffer irreparable loss if the order of injunction sought is not granted. The balance of convenience tilts against not issuing the order. The prayer for injunction therefore fails.
 - e. The plaintiff has also failed to lay the basis for the order to sell the suit property and share the proceeds to be issued at this interlocutory stage, and those prayers fails.
 - f. Section 27 of the *Civil Procedure Act* chapter 21 of Laws of Kenya provides that costs follow the event, unless where ordered otherwise by the court for good reasons. Though the plaintiff has failed in her application and ordinarily should have been condemned to pay costs, due to the familial relationship between the parties, I find it appropriate to direct that costs abide the outcome of the suit.
6. Flowing from the foregoing determinations on the notice of motion dated the 21st May 2025, the court finds and orders as follows:
- a. That the plaintiff's notice of motion dated 21st May 2025 is without merit and is dismissed.
 - b. The costs to abide the outcome of the suit.

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 10TH DAY OF DECEMBER 2025.

S. M. KIBUNJA, J.

ELC MOMBASA.

In The Presence Of:

Plaintiff : Mr Owino

Defendant : Mr. Araka

Kalekye-court Assistant.

S. M. KIBUNJA, J.

ELC MOMBASA.

