



LWG v GGW (Civil Case E008 of 2021) [2025] KEHC 18818 (KLR) (19 December 2025) (Ruling)

Neutral citation: [2025] KEHC 18818 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL CASE E008 OF 2021
MA ODERO, J
DECEMBER 19, 2025**

BETWEEN

LWG PLAINTIFF

AND

GGW DEFENDANT

RULING

1. Before this Court is the Notice of Motion dated 23rd June 2025 by which the Applicant LUCY WANJIKU GITONGA seeks the following orders:-
 - “ 1. Spent.....
 2. Spent
 3. That the court Honourable court be pleased to issue an order of temporary injunction restraining the Respondent his agents and or servants from alienating disposing and or transferring land parcel LR No. Aguthi/ Gatitu.2430 where the matrimonial home is built or any other developments on the said property or in determination of the appeal.
 4. Costs be provided for.”
2. The application was premised upon Section 1B 3A of the *Civil Procedure Act*, Order 51 Rule 1 and Order 49 Rules 1 and 2 of the Civil Procedure Rules 2010 and was supported by the affidavit of even date sworn by the Applicant.
3. The Respondent GEORGE GITONGA WARURU opposed the application through his Replying Affidavit dated 30th June 2025. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated 17th September 2025 whilst the Respondent relied upon his written submissions dated 9th October 2025.



Background

4. The Applicant and the Respondent were once a married couple whose marriage was legally dissolved vide a decree NISI issued by the Court on 3rd August 2021.
5. Following dissolution of the marriage the Applicant sought for division of matrimonial property vide High Court Civil Case No. E008 of 2021. The suit was heard and in judgement delivered on 21st February 2025 this Court made the following orders:-
 - “(1) That the following properties are declared by this court to constitute matrimonial properties.
 - i. Land Parcel No. Aguthi/katitu/2430.
 - ii. Permanent House erected on Land Parcel Number Aguthi/gatitu/2430.
 - iii. Motor Vehicle Registration No. KBN 844Q
 - (2) That a declaration is hereby issued that the plaintiff is entitled to a 50% (fifty percent) share of the value of land Parcel No. Aguthi/gatitu/2430 together with all building and developments thereon.
 - (3) That the property known as Aguthi/gatitu/2430 together with all buildings and developments thereon be valued and sold. The proceeds of sale to be distributed between the plaintiff and the Respondent at a ratio of 50:50.
 - (4) In the Alternative
Either party is at liberty and has the option to buy out the others interest in the above property.
 - (5) That prayers (4), (5), (6) (7) and (8) of the Originating Summons dated 3rd August 2021 are hereby dismissed entirely.
 - (6) This being a family mater each party to meet their own costs.”
6. Being dissatisfied with the judgment of the High Court the Applicant filed a Notice of Appeal dated 6th March 2025. The applicant also filed this present application seeking an interim injunction to restrain the Respondent from taking any steps to alienate the property known as LR Aguthi/gatitu/2430 (hereinafter the ‘Suit Property’) pending the hearing and determination of the appeal.

Analysis And Determination

7. I have carefully considered this application, the Supporting affidavit, the reply filed thereto as well as the written submissions filed by both parties.
8. The Applicant herein seeks injunctive orders to prevent any alienation of the suit land pending the hearing and determination of her intended appeal.
9. The principles guiding the issuance of injunctive orders were set out in the celebrated case of *Giella -vs- Casman Brown & CO. LTD [1973] EA* as follows:-
 - (i) The Applicant must first establish a prima facie case with a probability of success.



- (ii) The Applicant must demonstrate that he stands to suffer irreparable harm that cannot be adequately compensated by way of damages.
 - (iii) Where there is any doubt on the above then the Applicant must show that the balance of convenience tilts in his favour.
10. The ruling in the Giella case was reinforced in the case of Nguruman Limited -vs- Jan Nielson & 2 Other [2004] Bonde eKLR in which the Court of Appeal held as follows;-
- “In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;
- a. establish his case only at a prima facie level.
 - b. demonstrate irreparable injury if a temporary injunction is not granted, and
 - c. Ally any doubts as to (b) by showing that the balance of convenience is in his favour. 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 that the applicant is expected to surmount sequentially.”
11. The question therefore would be whether the applicant has established a ‘Prima facie case’. In the case of Mrao Ltd -vs- First American Bank Of Kenya Limited & 2 Others [2003] eKLR the Court of Appeal defined a ‘prima facie case’ as:-
- “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 been infringed by the opposite party to call for an explanation or rebuttal from the latter.”
12. It is not the duty of this court to comment on the merits or otherwise of the intended appeal. My duty is only to determine if a prima facie case has been made out.
13. The Applicant states that she is apprehensive that the Respondent may proceed to alienate the suit property without her involvement thereby prejudicing her appeal. The applicant further avers that any sale of the suit property will render her destitute.
14. Firstly the trial court directed that in the event the property was sold then the applicant was to receive a fifty per cent (50%) share of the proceeds of sale. Therefore the applicants claim that a sale would render her destitute holds no water.
15. Secondly and more importantly it was noted during the trial that the suit property is registered in the name of both the applicant and the Respondent as ‘Joint Proprietors’. In the circumstances the Respondent is not in a position to legally dispose of the said property without the involvement and participation of the applicant. Her apprehension that the suit property may be alienated without her knowledge is unfounded.
16. Indeed counsel for the Respondent did propose that the parties source for and jointly engage a valuer. This shows that the Respondent aims to act in a transparent manner in compliance with the court order.
17. Finally I find that no prima facie case has been established. I find no merit in this application. The same is dismissed in its entirety. Each party to meet their own costs.

DATED IN NYERI THIS 19TH DAY OF DECEMBER 2025



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MAUREEN A. ODERO

JUDGE

