



**JWG v JWN (Family Miscellaneous Civil Case E023 of 2025)
[2026] KEHC 1296 (KLR) (5 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1296 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
FAMILY MISCELLANEOUS CIVIL CASE E023 OF 2025
FN MUCHEMI, J
FEBRUARY 5, 2026**

BETWEEN

JWG APPLICANT

AND

JWN RESPONDENT

RULING

1. The application for determination is dated 22nd October 2025 seeks for orders of a declaration that property known as Juja/Komo Block 1/3xxx be declared as property acquired by the applicant before marriage and thus does not form part of the matrimonial properties. The applicant further seeks for orders of injunction against the respondent either by himself, his agents or servants from selling, transferring, alienating, disposing, trespassing, meddling, interfering or in any other way visiting the property known as Juja/Komo Block 1/3xxx. The applicant further seeks for a declaration that the properties Juja/Komo Block 1/3xxx, Mitubiri Wempa Block 3/9x, Plot No. 3/44xx in Kirinyaga, Mbeti/Gachoka/27xx & 27xx, Juja/Komo Block 1/53XX and motor vehicle registration number KBS XXXB Toyota Camb do not form part of matrimonial properties as they were solely acquired by herself. The applicant further seeks for a declaration that the respondent is not entitled to any of the aforesaid properties and should therefore be estopped by an order of the court from interfering with the said assets which do not form part of the matrimonial properties.
2. In opposition to the application, the respondent filed a Replying Affidavit dated 18th November 2025.

The Applicant’s case ___**

3. The applicant states that she was married to the respondent in July 2007 and their union was blessed with two children and the respondent assumed responsibility of one child born out of wedlock. Due to irreconcilable differences, the marriage was dissolved on 1st September 2025 vide Ruiru MCDC/ E189 of 2024.



4. The applicant states that she purchased property Juja/Komo Block 1/3xxx in September 2005 solely prior to her marriage from Mars Associates which was the undertaking company at Kshs. 195,000/-. The said plots were labelled as A2X, A2X and A2X and the entire purchase price was financed from proceeds she received from [Particulars Withheld] Company Ltd after her resignation and other personal savings. The applicant further states that she paid the purchase price in three instalments of Kshs. 165,000/- paid on 15th September 2005, Kshs. 20,000/- paid on 3rd November 2005 and Kshs. 10,000/- paid on 25th January 2006.
5. Upon purchase, the applicant states that she was issued with a share certificate indicating the plot as Juja/Komo Block 1/11/A0XX to facilitate the processing of the title deed. She began developing the said plot in the year 2009 without any input from the respondent and in 2011, she moved into the said house with her children even when it was not complete. She further states that the house was completed in 2015 and in 2016 she paid Kshs. 32,400/- to the undertaking company for title processing and a title was issued in her name on 15th July 2016.
6. The applicant states that in 2008, she sold Plot No. A0XX at Kshs. 195,000/- and she used part of the proceeds to purchase plot Mitubiri Wempa Block 3/9x at a consideration of Kshs. 75,000/-. She adds that she purchased the said property from Kabati Methi Plots Project and was issued with a share certificate and later on a certificate of lease dated 29th November 2016. In 2010, she sold Plot No. A026 for Kshs. 240,000/- and used part of the proceeds to bail out the respondent who was in police custody.
7. The applicant avers that she purchased Plot No. 3/44xx in Kirinyaga in the year 2012 from Geoffrey Githinji Kamicha vide sale agreement dated 24th December 2012 at a consideration of Kshs. 285,000/- vide a loan from KEPHIS and her personal savings.
8. The applicant states that she purchased land parcel Mbeti/Gachoka/27xx & 27XX in 2014 from James Kariuki Mutura vide sale agreement dated 19th July 2014 at Kshs. 500,000/- each at Kshs. 250,000/- per acre. Upon execution of the sale agreement, she paid a down payment of Kshs. 100,000/- and the balance of Kshs. 400,000/- was paid upon transfer. The applicant states that she paid the purchase price through a loan from KEPHIS and her personal savings. Property No. 27xx comprises of a 3 bedroom house constructed between 2015 and 2019 but property 27XX is yet to be developed.
9. The applicant avers that she purchased property Juja/Komo Block 1/53XX in the year 2020 from Kenneth Githinji Gitura vide sale agreement dated 9th March 2020 at a consideration of Kshs. 1,450,000/- vide her gratuity from KEPHIS after resigning a loan from SIMLAW. Further, the applicant states that she bought motor vehicle registration number KBS XXXB Toyota Cami in 2017 for a consideration of Kshs. 450,000/- vide a loan from KEPHIS.
10. The applicant argues that the lower court in granting the divorce also granted the respondent access to property known as Juja/Komo Block 1/3xxx which does not form part of the matrimonial property. Thus the applicant is apprehensive that the respondent may interfere with the suit properties by selling, transferring alienation or disposing them off to deprive her of her right to the said properties thus occasioning her irreparable loss and damage.

The Respondent's Case __**

11. The respondent states that he cohabited with the applicant as husband and wife in 2002, solemnized their union in 2007 and were blessed with three children born in 2003, 2008 and 2011. The respondent further states that their marriage was dissolved on 1st September 2025.



12. The respondent avers that all the properties listed by the applicant were acquired during the marriage and therefore they qualify as matrimonial property.
13. The respondent states that he currently resides in a two bedroom house on their matrimonial compound following a court order in Ruiru MCDC/E189/2024 which granted him the right to reside in the said house during the marital dispute.
14. The respondent states that the matrimonial home Juja/Komo Block 1/3xxx was constructed between 2018 to 2010 during which he supervised construction daily, delivered materials, paid workers and physically worked at the site. He further states that after completion of the main house, he contributed substantially to the development of the two bedroom house and two single room units all built on the said land parcel.
15. The respondent states that he is a self-employed businessman and has consistently operated business ventures capable of generating income. Further his flexible business schedule enabled him to supervise construction projects, handle approvals, manage farm activities and be available for the children after work. The applicant who worked as an Agriculture Extension Officer was frequently assigned field duties away from home thus limiting her physical presence.
16. The respondent states that he supervised the apartment project on land parcel Juja Block 1/53XX and purchased materials, engaged workers and dealt with the county officials. He further contributed heavily to farm operations on land parcel Beti/Gachoka 27xx & 27XX, he paid Kshs. 86,000/- for fencing on land parcel Kirinyaga Plot No. 3/44xx and handled county documentation and approvals, making numerous trips to Kutus Headquarters. As regards Plots A0XX, A0XX and A026 on Juja/Komo, the respondent states that they purchased them jointly in 2005 and the applicant secretly sold Plot A0XX and used the proceeds to buy Mitubili Wempa Block 3/9x making it a substituted matrimonial property. Further Plot No. A0XX was sold to raise money for the applicant's mother's bills. The respondent states that although motor vehicle registration number KBS XXXB is registered under the applicant, he repeatedly repaired it, serviced it and maintained it.
17. The applicant filed a Further Affidavit dated 11th December 2025 and states that she lives with the children and provides for their upkeep solely without any help from the respondent. The applicant states that she began cohabiting with the respondent in 2006 and they have two children as the child born in 2003 is not the respondent's biological child, the respondent only assumed responsibilities over the said child after marriage.
18. The applicant argues that the judgment of the court on divorce proceedings did not extend orders of temporary residence on where the respondent lives currently occupying the two bedroom house and therefore he should be ordered to vacate the same.
19. The applicant states that the matrimonial home was constructed between 2009 and 2015 and the respondent never carried out any supervision as she tasked Mr Jackson Mwangi Itugu to supervise the project as the foreman and she used to pay the workers from her pocket and at times she would give the foreman cash to pay the workers. Further, the two bedroom house was constructed between 2015 and 2017 and she had a foreman and engineer who were always present at the site and she was personally dealing with county officials for approvals.
20. The applicant avers that Kirinyaga Plot No. 3/44xx is not yet developed and no approvals have been done by the county. She further states that motor vehicle registration number KBS XXXB was purchased by her solely and the respondent has never taken part in its maintenance. The applicant further states that the receipts produced by the respondent are mere forgeries since no construction



was taking place in 2007. The applicant argues that the respondent should be compelled to disclose all the properties he owns or in the alternative, each party to maintain what he/she acquired and owns.

21. Parties put in written submissions.

The Applicant's Submissions.

22. The applicant relies on Section 7 and 17 of the *Matrimonial Property Act* and submits that parties have officially divorced through a court decree dated 1st September 2025. Relying on the cases of *East African Industries vs Trufoods (1972) EA 420*; *Giella vs Cassman Brown & Co. Ltd (1973) EA 358* and *Nguruman Ltd vs Jan Bonde Nielsen & 2 Others (2014) eKLR*, the applicant argues that she has shown how she contributed towards acquiring of the suit properties and how she and the respondent separated and when the respondent came back he occupied a two bedroom house through a court order. The applicant further submits that she has demonstrated how she sold some of the properties in order to pay cash bail for the respondent and therefore the sold properties cannot be part of matrimonial properties as they no longer exist.
23. The applicant submits that matrimonial property has sentimental value and attachment and cannot be disposed of as that may cause irreparable loss/harm which cannot be compensated by way of damages. The applicant further submits that the burden of proof that the inconvenience which she will suffer if the orders sought are not granted is greater than that which the respondent will suffer. The respondent on the other hand has not adduced any evidence to show ownership or how he contributed towards the acquisition of the said properties and his witness affidavits did not offer any useful evidence whatsoever.

The Respondent's Submissions

24. The respondent submits that the applicant seeks orders whose effect would conclusively determine proprietary rights before the evidence is tested. The respondent refers to the cases of *Mbuthia vs Jimba Credit Finance Corporation [1988] eKLR* and *Olympic Sports House Ltd vs School Equipment Centre Ltd [2012] eKLR* and submits that interlocutory applications should preserve and not determine rights.
25. The respondent argues that the applicant has not met the threshold for injunctive orders as she has not proved that she has a prima facie case and in any event since ownership and contribution are contested, the same cannot be resolved at the current stage.

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

Content of the Application

26. I have perused the pleadings filed by the applicant in particular the Notice of Motion dated 22nd October 2025 and noted that the applicant has sought temporary injunctive orders against the respondent in respect of prayer No. 4. The rest of the prayers in the application are final prayers, which if determined would determine this case. The Originating Summons contain similar prayer that form the subject of this suit. The parties are before the court for their evidence in this matrimonial property dispute to be heard for the resolution of the dispute. The hearing date of the case is yet to come. For now, this court will restrict itself to the prayer for injunctive orders and leave the rest of the prayers to be determined after hearing both parties in the suit.
27. 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 vs 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.

28. Similarly in *Dr. Simon Waiharo 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

29. 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."

30. It is not in dispute that the applicant and the respondent were married and later divorced vide decree nisi issued by the Chief Magistrate Court in Ruiru MCDC/E189/2024. The fact of marriage is not disputed by both parties however the applicant contests when the marriage began and she argues that the suit properties should not be treated as matrimonial properties as she acquired them solely. The respondent on the other hand argues that he contributed towards the acquisition of the suit properties mainly through non monetary means.
31. 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.
32. 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 their 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 the suit properties are not matrimonial properties and therefore the court ought to make such a declaration. From the record, the court cannot ascertain the issue of contribution or lack of at this interlocutory stage and would need to be ventilated at trial. Furthermore, the issue of declaring whether the properties are matrimonial would need to be ventilated at trial through evidence by the parties. It is therefore my considered opinion that the applicant has established a prima facie case.

Irreparable Injury

33. 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."
34. The issue that arises in this case in view of the case of Paul Gatonga (supra) is whether the applicant demonstrated that she will suffer irreparable loss in the event that orders of injunction are not granted. Further that such loss would not adequately be compensated by an award of damages. The applicant submits that the matrimonial home may be disposed off yet it has sentimental value and attachment which cannot be compensated by way of damages.
35. From the pleadings, the applicant argues that the properties are not matrimonial properties but argues that the respondent may dispose off their matrimonial home causing her irreparable harm. It is my view that only through a full hearing of the case can the court determine whether the suit properties fall within the ambit of matrimonial property. It is therefore my considered view that failing to



preserve the suit properties will cause irreparable harm to the applicant which would not be adequately compensated by way of damages.

Balance of Convenience Test

36. 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.

37. In light of the above, it is my considered view that the balance of convenience tilts in favour of the applicant because the inconvenience caused to her will be much greater than that caused to the respondent if the injunction is not granted.

Conclusion

38. I thus opine that the applicant herein has met the threshold as set out in the case of Giella vs Cassman Brown and therefore an injunction ought to issue in her favour. The orders of injunction serve the purpose of preservation of the property pending determination of a suit. It is important that the properties said to be matrimonial property be preserved so that neither of the parties risks loss or wastage of any of the said properties.

39. The application dated 22nd October 2025 is hereby allowed in the following terms: -

That a temporary injunction do hereby issue against the respondent either by himself, servants, Agents, from selling, alienating, transferring, disposing or in any other way interfering with properties known as LR Juja Komo Block 1/37XX.

40. There shall be no orders as to costs in this application.

41. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 5TH DAY OF FEBRUARY 2026.

F. MUCHEMI

JUDGE

