

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC CASE NO. 45 OF 2025

CATHERINE MUTHONI KIIRU:.....APPLICANT/PLAINTIFF

VERSUS

ABSA BANK KENYA PLC:.....1ST RESPONDENT

ROBERT NG'ANG'A MUNYUA:.....2ND RESPONDENT

RULING

This court has considered the application dated 4th April 2025 and is brought under Section 79(3) of the Land Act, section 12(5) of the Matrimonial Property Section 93 of the Land Registration Act and Order 51 Rule 1 of the Civil Procedure Rules seeking the following orders;

1. This application be certified urgent and be heard ex-parte in the first instance.
2. Pending hearing and determination of this application a temporary injunction be issued against the 1st Defendant /Respondent, its servants, agents or any person/persons acting under them from however selling, alienating, trespassing onto and /or in any manner whatsoever interfering with or

otherwise dealing with the property Title Number MAVOKO TOWN BLOCK 20/588.

3. Pending hearing and determination of the main suit herein a temporary injunction be issued against the 1st Defendant/ Respondent, its servants, agents or any person/persons acting under them from however selling, alienating, trespassing onto and or in any manner whatsoever interfering with or otherwise dealing with the property title number MAVOKO TOWN BLOCK 20/588.

It is supported by affidavit of CATHERINE MUTHONI KIIRU and grounds that the Plaintiff /Applicant is the legal wife to the 2nd Respondent/ Defendant and the 2nd Respondent/Defendant is the registered owner of TITLE NUMBER: MAVOKO TOWN BLOCK 20/588. The Applicant/Plaintiff avers that the subject suit property forms part of their matrimonial property as it was legally obtained by the 2nd Respondent/Defendant during the subsistence of their marriage. The Applicant/Plaintiff avers that she has credible information that the suit has property was charge to the 1st Respondent/ Defendant for a facility of Kshs. 23,702,060.85/= through a letter dated the 10th March from Wamae &Allen LLP Advocates. The Applicant/Plaintiff did not issue spousal consent for TITLE NUMBER: MAVOKO TOWN BLOCK 20/588 to be charged with the 1st Respondent/Defendant. The dealings were done behind her back clandestinely without her knowledge. That the

Applicant/ Plaintiff apprehensive that if the property is sold by the 1st Respondent /Defendant she will incur immense economical and financial losses as she has a shop in the suit property and will have to part with it. That the Applicant/Plaintiff avers that she should not be punished for the negligent acts of the 1st Respondent /Defendant to carry out their proper due diligence before extending their facilities to the 2nd Respondent /Defendant and ensuring that they have the proper documentations.

This court has considered the application and the submissions therein. On the issue of temporary injunction are well settled and are set out in the judicial decision of *Giella vs Cassman Brown* (1973) EA 358. This position has been reiterated in numerous decisions from Kenyan courts and more particularly in the case of *Nguruman Limited vs Jan Bonde Nielsen & 2 others* CA No.77 of 2012 (2014) eKLR where the Court of Appeal held that;

“in an interlocutory injunction application the Applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates 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 rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”.

Consequently, the Plaintiff ought to, first, establish a prima facie case. In *Mrao Ltd vs First American Bank of Kenya Ltd (2003) EKLR* the Court of Appeal gave a determination on a prima facie case. The court stated that;

“... in civil cases, it is a case in which, on the material presented to the court a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

In support of the application, the Applicant stated that she is the legal wife to the 2nd Respondent/ Defendant and the 2nd Respondent/Defendant is the registered owner of TITLE NUMBER: MAVOKO TOWN BLOCK 20/588. The Applicant/Plaintiff avers that the subject suit property forms part of their matrimonial property as it was legally obtained by the 2nd Respondent/Defendant during the subsistence of their marriage.

Secondly, The Plaintiff has to demonstrate that irreparable injury will be occasioned to them if an order of temporary injunction is not granted. The judicial

decision of Pius Kipchirchir Kogo vs Frank Kimeli Tenai (2018) eKLR provides an explanation for what is meant by irreparable injury and it states;

“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.

The Applicants stated that she has credible information that the suit has property was charge to the 1st Respondent/ Defendant for a facility of Kshs. 23,702,060.85/= through a letter from Wamae & Allen LLP Advocates. The Applicant has annexed a marriage certificate and maintains that a spousal consent was not obtained.

Thirdly, the Plaintiff has to demonstrate that the balance of convenience tilts in their favour. In the case of Pius Kipchirchir Kogo vs Frank Kimeli Tenai (2018) EKLRL which defined the concept of balance of convenience as:

‘The meaning of balance of convenience will favour of the Plaintiff’ is that if an injunction is not granted and the Suit is ultimately decided in favour of the Plaintiffs, the inconvenience caused 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 will be greater than that which may be caused to the Defendants. Inconvenience be equal, it is the Plaintiff who will suffer.

In other words, the Plaintiff has to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting”.

The decision of Amir Suleiman vs Amboseli Resort Limited (2004) eKLR where the learned judge offered further elaboration on what is meant by “*balance of convenience*” and stated;

“The court in responding to prayers for interlocutory injunctive reliefs should always opt for the lower rather than the higher risk of injustice.”

The 1st Defendant/Respondent submitted that the Applicant is a stranger to them. That they charged the said suit property which belongs to the 2nd Respondent for an aggregate principal amount of kshs. 28,500,000/=. That the last loan repayment was recorded on 27th December 2024 and in early 2025 the bank instructed the Advocates on record to commence the security realization process to recover the

outstanding arrears. That the purported marriage between the Applicant and the 2nd Respondent is completely immaterial and irrelevant as the 2nd Respondent swore affidavits of marital status confirming he was not married.

Bearing this in mind, I am convinced that there is a risk in not granting orders of temporary injunction than granting them, as I wait to hear the suit on its merits. This is especially so because I have not had opportunity to interrogate all the documents that might be relevant in providing a history and/or chronology of events leading to the current situation on the ground. I have also not had the opportunity to interrogate the annexures therein.

In *Robert Mugo wa Karanja vs Ecobank (Kenya) Limited & Another* (2019) eKLR where the court in deciding on an injunction application stated;

“circumstances for consideration before granting a temporary injunction under order 40 rule 1 of the Civil Procedure Rules requires a proof that any property in dispute in a suit is in a danger of being wasted, damaged or alienated by any party of the suit or wrongfully sold in execution of a decree or that the Defendant threatens or intends to remove or dispose the property; the court is in such situation enjoined to a grant a temporary injunction to restrain such acts...”

In view of the foregoing, I find that the application is merited and order that the status quo be maintained pending the hearing and determination of this suit. Costs to be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 25TH DAY OF
FEBRUARY 2026.**

N.A. MATHEKA

JUDGE