



**MOM v PMM; GSM (Interested Party) (Matrimonial Case E004 of 2023)
[2026] KEHC 1528 (KLR) (Family) (22 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 1528 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MATRIMONIAL CASE E004 OF 2023
S MBUNGI, J
JANUARY 22, 2026**

BETWEEN

MOM APPLICANT

AND

PMM RESPONDENT

AND

GSM INTERESTED PARTY

RULING

1. The Respondent herein filed a chamber summons under Order 1 Rule 3 of the Civil Procedure Rules and Order 40 Rule 1 and 2, where he seeks the following orders;
 - a. That this matter be certified urgent and the same be heard on a priority basis(spent)
 - b. That the court be pleased to join the interested party as a party in these proceedings.
 - c. That the Applicant herein be temporarily enjoined from doing construction work on land parcel number Butso/17XXX till this application is heard inter parties and determined.
 - d. That the Applicant herein, the interested party and/or any person acting on their instructions, be barred by injunction from carrying out construction work on land parcel Butso/17XXX till this cause is heard and determined.
 - e. Costs be provided for.



2. The Application is premised on the grounds set out on its face and on the supporting affidavit sworn on 1st February 2023 by the Respondent, PM, who avers that he and the applicant got a divorce 693 of 2016 at Milimani Commercial Court. He contends that the completion of the division of the matrimonial property was yet to be completed when the applicant started construction on the Land parcel Butso/So/Shikoti/17XXX, which he avers belongs to him and now claims that his son, the intended third party, wants to finish construction and has since become rude and abusive towards him.
3. He avers that the applicant is carrying out construction through her son to the detriment of the existing case and now prays that the status quo be maintained to enable them proceed with the case and that their son GS be joined in the application as an interested party since he is interfering with the property while there is a court case.
4. The applicant filed a response to the application where she acknowledged that the interested party who is their son was not a party to the proceedings and that the respondent is trying to drag their son to the process who she acknowledged had been doing construction and repairs to their house from 2024 and denied the allegation that they had made any other construction on the land.
5. She claimed that the respondent went further to give a stranger the parcel of land Butso/So/Shikoti/1XX and Butso/So/Shikoti/1XX, who has constructed a house and has cut down trees and cleared the forest, which violates the court's order. She prays that the application be dismissed as it lacks merit.
6. The application was canvassed by way of written submissions.

Applicant's submissions

7. The applicant filed their written submissions dated 6th October 2025 where she averred that their son GSM did not have an interest in the subject matter of the suit and did not occupy any of the matrimonial property and quoted the case of communications commission of Kenya & 3 others vs. Royal Media services limited & 7 others; Nature Foundation Limited (2014) KESC 52 (KLR) and held that the respondent had failed to demonstrate the requirements why their son ought to be enjoined as an interested party as held in Mumo Matemo case.
8. On whether the interlocutory injunction ought to be granted, the court quoted the case of Giella vs. Cassman Brown and whether they had established a prima facie case. She avers that no prima facie case had been established by the Respondent, as there is no construction being done by the intended interested party and no loss has been incurred by the Respondent, and thus prays that the application be dismissed for abuse of the court process.

Analysis and determination

9. This court has considered the application, the affidavits, as well as the submissions before it and finds the issues for determination are;
 - a) Whether the Interested Party should be joined in these proceedings;
 - b) Whether the Respondent has met the threshold for the grant of interlocutory injunctive orders
10. On the first issue of whether the intended interested party should be enjoined as a party to the proceedings, it is well to note that the principles governing joinder of an interested party are now well settled. In *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 Others* [2014] eKLR, the Court held that an interested party must demonstrate a personal interest or stake that is clearly proximate and not remote, and must show prejudice likely to be suffered if not enjoined.



11. In the present case, it is not disputed that the intended interested party is the son of the Applicant and the Respondent. However, a mere relationship does not confer a legal or proprietary interest in the subject matter. No evidence has been placed before this Court to demonstrate that the Interested Party holds any registered, beneficial, or equitable interest in land parcel Butso/17XXX.
12. The respondent's allegations that he is undertaking constructions and or repairs on the property do not elevate him to the status of an interested party within the meaning contemplated by law.
13. The said property is the subject of a matrimonial cause (Divorce Cause No. 693 of 2016 at Milimani) between the Applicant and Respondent. G is their adult son. Even if he is undertaking repairs, as has been admitted by the Applicant, the alleged activities do not confer upon him a legal interest in the suit property sufficient to warrant joinder as an interested party. The Respondent has not shown how the orders sought in the originating summons will directly bind or prejudice G in a manner that cannot be addressed through enforcement against the Applicant.
14. This Court therefore finds that the Respondent has failed to meet the legal threshold for joinder of the interested party.
15. On the second issue of whether an interlocutory injunction ought to be granted, the principles for the grant of interlocutory injunctions are well settled in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358, which are:
 - a) The applicant must establish a prima facie case with a probability of success;
 - b) The applicant must demonstrate that he stands to suffer irreparable loss not compensable by damages; and
 - c) If the Court is in doubt, it will decide the application on a balance of convenience.
16. A prima facie case was further defined in *Mrao Ltd vs. First American Bank of Kenya Ltd & 2 Others* [2003] eKLR as one that discloses arguable rights which have been infringed or are threatened with infringement.
17. In the present matter, the Respondent has not demonstrated that there is active construction being undertaken by the Applicant or the intended Interested Party to his detriment. The Applicant's explanation that the works complained of are repairs has not been controverted by objective evidence such as valuation reports or site inspection findings.
18. Further, the Respondent has not demonstrated any irreparable loss that cannot be adequately remedied by damages. Bare assertions of prejudice, without proof, do not suffice. As held in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR, the three principles in *Giella* are sequential and must all be satisfied.
19. In addition, the Court notes with concern the Applicant's allegations that the Respondent has himself dealt with other parcels of land in alleged violation of court orders. Equity demands clean hands, and a party seeking injunctive relief must approach the Court with utmost candour. This principle was emphasised in *Uhuru Highway Development Ltd v Central Bank of Kenya & 2 Others* [1996] eKLR.
20. In the circumstances, this Court finds that the Respondent has failed to establish a prima facie case, has not demonstrated irreparable harm, and that the balance of convenience does not tilt in his favour.
21. While the court has found that the Applicant did not satisfy the strict *Giella v Cassman Brown* threshold for a prohibitory interlocutory injunction at the time of the earlier application, the preservation of the status quo in succession and matrimonial property litigation is a distinct but related



principle aimed at preventing dissipation, waste, or irreversible alteration of the subject property pending final determination

22. In the circumstances of this case, and in exercise of the court's discretion under Section 3A of the *Civil Procedure Act* (inherent powers) and the overriding objective, it is just, equitable and necessary that the status quo as at the date of filing of the Originating Summons be maintained to avoid escalation of the dispute and to enable the court to make a fair and enforceable final determination.
23. In view of the foregoing analysis, this Court finds that:
 - a. The application for joinder of the Interested Party lacks merit and is hereby dismissed;
 - b. The Respondent has failed to meet the threshold for the grant of interlocutory injunctive orders under Order 40 of the Civil Procedure Rules; and
 - c. Pending hearing and determination of the suit, both parties, their agents, servants, employees, family members, including GSM, and anyone acting under their instructions are restrained from: i. Carrying out new construction, erecting structures, major development, subdivision, sale, transfer, lease, mortgage, charge, or any other disposal or encumbrance on land parcel Butso/So/Shikoti/17XXX; ii. Making major structural alterations, demolition, excavation, or any works that materially change the physical character or value of the parcel;
 - d. Status quo to be maintained until the hearing and determination of the suit.
 - e. Consequently, the Chamber Summons application dated 1st February 2023 is dismissed. Each party to bear its own costs of the application.
 - f. Right of Appeal 30 days explained.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA 22ND DAY OF JANUARY, 2026.

S.MBUNGI

JUDGE

In the presence of:-

CA: Angong'a/Nekesa

In absence of the parties, though aware of the date of ruling and the delivery time.

The Court Assistant to upload the Ruling in the CTS forthwith.

