



**BWW v PWN (Family Originating Summons E006 of 2025)
[2026] KEHC 4843 (KLR) (17 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4843 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
FAMILY ORIGINATING SUMMONS E006 OF 2025**

**BM MUSYOKI, J
APRIL 17, 2026**

BETWEEN

BWW APPELLANT

AND

PWN RESPONDENT

RULING

1. Spent.
2. That the Honourable Court be pleased to order the defendant to disclose the identities of the matrimonial properties the defendant purchased and or developed with the plaintiff during the subsistence of their marriage which the defendant roughly knows to be some of those listed in prayer 3 and 4 hereof. Further, the defendant be ordered to disclose his KRA PIN number for verification of the said properties.
3. That the Honourable Court be pleased to restrain the defendant from selling, disposing of, charging or transferring to any other person, save for the plaintiff any of the properties known as: Plot No. XXXX, Kiboko Estate Thika, Matrimonial House/home at Gakii sublocation Chania location Gatundu North Sub-County, Kiambu County, a 20 acre land in Gilgil Nakuru County, an apartment complex in Juja Town- Kiambu, Land shares plots with Mangu Investment Company pending the Interpartes hearing of this application.
4. That the Honourable Court be pleased to restrain the defendant from selling, disposing of, charging or transferring to any other person save to the plaintiff any of the properties known as: Plot No. XXXX, Kiboko Estate Thika, Matrimonial House/home at Gakii sublocation Chania location Gatundu North Sub- County, Kiambu County, a 20 - acre land in Gilgil Nakuru County, an apartment complex in Juja Town Kiambu, Land/shares plots with Mangu Investment Company pending the hearing and determination of this suit.



5. That the costs of this application be provided for.

The application is supported by affidavit of the plaintiff sworn on the same date in which she deposes that she is estranged to the defendant who was her husband since 1995 and that she heavily contributed to acquisition and/or development of the properties registered to the defendant. She takes position that the properties she has listed are matrimonial properties under the meaning of Section 6 of the *Matrimonial Property Act*. She avers further that she is apprehensive that the defendant will once served with the application dispose the properties. She has shown by way of annexures that the parties are prosecuting divorce cause number E049 of 2024 before the Chief Magistrates Court at Thika.

6. In opposition to the application, the defendant swore an affidavit dated 18th July 2025. In it, he avers that the assets mentioned by the plaintiff are not matrimonial properties and adds that the parties lived together as husband and wife for a short period of four years between 2001 and 2005. He avers further that they have been having separate investment systems in Kenya and Boston in USA. The defendant has added that the plaintiff did not make any monetary or non-monetary contribution towards acquisition of the assets and he has never received any emotional or moral support from the plaintiff during the acquisition of the properties.
7. According to the defendant, the land in Chania was d gifted to him by his father in 1992 while those in Gilgil, Mangu and Muthondu Farms were inherited from the estate of his father vide succession cause number 76 of 2009 at the Chief Magistrate's Court at Thika. He has exhibited a certificate of confirmation of grant to that effect dated 7th December 2021. For the property in Kiboko Estate and Kangema Farms, he deposes that he purchased them in 2007 and 2021 respectively which was after they had separated with the plaintiff. The same goes for the Juja plot which he swears to have purchased and started development thereon in 2012 completing in 2016.
8. I have read the submissions of the plaintiff dated 20th August 2025 and those of the defendant dated 16th August 2025 as well as the affidavits of the parties. I gather from my reading that there is no contestation that the parties were married. As far as the period of subsistence of the marriage is concerned, there is dispute as to whether the same was from 1995 or 2001. There is also no agreement as to when the properties the respondent claims to be matrimonial properties were acquired.
9. I will start with analyzing the merits of prayer 2 of the application. In it, the plaintiff seeks that the court makes an order of disclosure of the properties purchased or developed by the parties which she believes consisted among others those listed in prayers 3 and 4. In my view, this prayer borders on a fishing expedition. The plaintiff claims to have contributed to acquisition of all the properties and seeks to establish her interest in them. If indeed she did so, she is supposed to have a glimpse or an idea of when and how the process of acquisition was initiated, carried out and achieved. Asking this court to compel the defendant do disclose the properties or his KRA PIN brings out a picture of a person who was out of touch with their relationship which creates doubts of any collaboration or cooperation leave alone partnership or contribution in acquisition of the properties.
10. A party should be concise and specific in what they want the court to grant. The duty of the court is to adjudicate matters brought by parties and not to participate in investigations or founding a cause of action. A court cannot be treated as an enabler of an individual's investigations or desires for discovery unless the discoveries are directly emanating from what is already pleaded or subject of the suit. In that regard., I decline to grant prayer 2 of the chamber summons.
11. I now turn to the prayers for injunction. It is trite that a party who desires to get orders of injunction must demonstrate that they have a prima facie case with a probability of success. The party must also demonstrate that unless the application is granted, they stand to suffer loss which cannot be adequately



compensated by an award of damages and if the court is in doubt of the existence of the first two conditions, it would decide the application on a balance of convenience.

12. The plaintiff has in her short eight paragraphs supporting affidavit casually indicated that the properties are matrimonial properties without telling the court when and how they were acquired. She has not elaborated on how she made contribution to their acquisition. The only thing the affidavit proves is that the parties celebrated their marriage in a church on 15-02-2001.
13. I agree with the plaintiff's submissions that the marriage was first a customary marriage before they converted it to a christian one. The exhibited certificate of marriage shows that at the time of the church wedding, the two were in a customary marriage. The defendant who is the petitioner in the divorce cause has pleaded at paragraph 3 of the petition that they started living together as husband and wife in 1995. I therefore find that, the marriage subsisted before 2001 and the defendant's claim that the cohabitation lasted for four years only is not true. In that case, I will consider the period of cohabitation as between 1995 and 2006.
14. Article 45(3) of *the Constitution* provides that parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage. My interpretation of this in the context of matrimonial property disputes like this one is that, the property that each acquired before and after marriage are not to be considered while determining the parties' interests unless it is shown that the resources used in the latter acquisition was part of matrimonial property. This is in addition to the condition that a party who claims a share must demonstrate that they made verifiable contribution towards the acquisition of the property. It was held by Honourable Justice S.N. Mutuku in *AWN v JGK* [2021] KEHC 4780 (KLR) that;

“The share of each party to a marriage is pegged on the contribution made by each party. That is the law as it is and as applied in various decisions.”
15. The plaintiff has given general statements on the acquisition of the properties without giving evidence or facts. I note from her pleadings that she is a nurse working in the United States of America. She has not attached or exhibited her sources of income and the trail of her income and expenditure which would point to her contribution. I am unable to tell from the pleadings and affidavits what she brought to the table whether monetary or otherwise during the eleven years the marriage subsisted.
16. On the other hand, the defendant has stated that some of the mentioned proprieties were inherited from his father and has exhibited a certificate of confirmation of grant in Thika Chief Magistrate's succession cause number 76 of 2009. He has also deponed that the Juja and Kiboko Estate properties were acquired in 2012 and 2021 which was definitely some years after the parties separated. Although the defendant has not given the details of the acquisitions, these averments water down the plaintiff's claim over the properties. It was the onus of the plaintiff to prove her interest in the properties before the defendant could be called upon to answer to the same which I find she has failed to do.
17. A spouse who comes to court claiming contribution should demonstrate sincerity and genuineness of her claim which includes readiness to disclose what she earned and contributed during the existence of the marriage. The facts or details given by the plaintiff are too scanty that I hold the view that she must be deliberately withholding from court some pertinent information which if disclosed will expose her insincerity and as such it is my finding that she has approached this court with unclean hands.
18. Based on what I have stated above, I do not think that the plaintiff has established a prima facie case with a probability of success. This is not to say that the case is hopeless. The plaintiff remains with a chance of giving her case more meat and proteins to make it persevere the vagaries of litigation. For now, I am not convinced that she has met the requisite threshold.



19. On the aspect of irreparable damages, I hold the view that the plaintiff has not shown that she stands to suffer loss that cannot be adequately compensated by an award of damages. She has not told the court how much she invested in these properties. She has not given the value for the properties. She has not alluded to the fact that the defendant would not be able to compensate her in the event the court finally finds that she was entitled to some share of the properties. Honourable Justice J. Mativo (as he then was) held in *Paul Gitonga Wanjau v Gathuthi Tea Factory Company Ltd, Chairman Verification Committee for Gathuthi Tea Factory Directors Elected & Chairman, Dispute Resolution Committee for Gathuthi Tea Factory Ltd* (2016) KEHC 7263 (KLR) that;

“In order to show irreparable harm, the moving party must demonstrate that it is a harm that cannot be quantified in monetary terms or which cannot be cured.”

20. In any case, the first two conditions for award of interlocutory injunction must move together such that if the plaintiff fails to prove one, the application ought to fail. In *Nguruman Limited v Jan Bonde Nielsen, Herman Philipus Steyn Also Known as Hermannus Phillipus Steyn & Hedda Steyn* (2014) KECA 606 (KLR), the Court of Appeal held as follows;

“If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between.”

21. I have no doubt on the first two conditions for grant of orders of injunction and as such, I don’t think that I need to spend time on the principle of balance of conveniences. Even if were to, it is my considered view that the balance of convenience would tilt in favour of declining the application. The defendant should not be inconvenienced by an order of the court in enjoying his rightly acquired properties.

22. The upshot of the above is that I find no merits in this application and the same is hereby dismissed with costs to the defendant.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17TH DAY OF APRIL 2026.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Judgment delivered in presence of Mr. Masore Nyangau for the plaintiff and Mr. Muthomi for the defendant

