

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**HC FOS/E001/2025**

**JANE WANJIRU KAGUO NGOBIA .....**

**APPLICANT**

**VERSUS**

**PAUL KAGUO NGOBIA.....**

**RESPONDENT**

**JUDGEMENT**

1. Before this Court is the Originating Summons dated **23<sup>rd</sup> April 2025** by which the Applicant **JANE WANJIRU KAGUO NGOBIA** seeks the following orders:

**“(1) A permanent injunction issue against the Matrimonial Properties listed under Paragraph 5 of the Supporting Affidavit pending hearing and determination of Divorce Case Nyeri MCDC E010 of 2025.**

**(2) Costs of the Suit.”**

2. The Respondent **PAUL KAGUO NGOBIA** did not enter appearance and did not file any reply to the Summons. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated **10<sup>th</sup> February 2026**.

### **BACKGROUND**

3. The Applicant averred that she got married to the Respondent under Statutory Law on **16<sup>th</sup> August 1997**. That there arose irreconcilable differences between the couple and the Applicant filed a Petition for divorce being **Nyeri MCDC No. E010 of 2025** which cause is still pending determination in the Lower Court.

4. The Applicant claims that during the pendency of her marriage to the Respondent the following properties were acquired;-

**(i) LR KJD/Kitengela/9379**

**(ii) Laikipia Nanyuki/Marua Block III/1599**

**(iii) Plot Number A570 under County Government of**

**Kajiado**

**(iv) LR Nanyuki/Marua BLK 12/7555 (Unison Sacco)**

**(Title**

**not yet processed)**

**(v) Motor Vehicle Registration Number KDQ 769N.**

5. The Applicant states that she is apprehensive that the Respondent may move to interfere with the ownership of the above listed properties to her detriment and thus seeks permanent injunction against the said properties.
6. As stated earlier the Respondent did not respond to the Summons.

### **ANALYSIS AND DETERMINATION**

7. I have carefully considered the application before this court, the relevant law as well as the submissions filed by the Applicant. The only issue is whether the interlocutory mandatory injunction prayed for is merited.
8. The circumstances under which the Court may grant a mandatory injunction were also set out in the case of

**MALIER UNISSA KARIM**

**-VS- EDWARD OLUOCH ODUMBE [2015] eKLR as**

follows:-

**“The test for granting a mandatory injunction is different from that enunciated in the Giella -vs- Casman Brown Case which is the locus classicus care of Prohibitory Injunctions. The threshold in mandatory injunctions is higher than the case of prohibitory injunction and the Court of Appeal in the case of Kenya Breweries Ltd -vs- Washington Okeyo [2002] E.A 109 had the occasion to discuss and consider the principles that govern the grant of a mandatory injunction was correctly stated in Vol 24 Halsburys Laws of England 4<sup>th</sup> Edition Paragraph 948 which states as follows:-**

**“A mandatory injunction can be granted on an interlocutory application as well as at the hearing but in the absence of special circumstances, it will not normally be granted. However if the case is clear and one which the Court thinks ought to be decided at once or if the act done is simple and summary one which can easily be remedied or if the Defendant attempts to steal a**

**match on the plaintiff, a mandatory injunction will be granted on an interlocutory application.”**

9. Generally an application for injunction can only be entertained where there is in place a substantive suit. In

**CRESTA INVESTMENTS LIMITED -VS- GULF AFRICAN**

**BANK LIMITED & Another [2020] eKLR** it was held that

**“Moreover an application for injunction under Order 40 of the Civil Procedure Rules is predicated on a suit filed by the party seeking the injunction. An injunction without a substantive claim is a plea in vain and cannot lie in law or at all.” [Own emphasis]**

10. In this case no substantive suit seeking division of matrimonial property has been filed by either party. The Application for injunctive orders on the divorce cause still pending before the Lower Court. Thus the court cannot countenance. It is trite law that suits relating to division of matrimonial property can only be filed once parties have been divorced. There is no telling whether the petition for divorce will be allowed or not. The court cannot proceed to

issue injunctive orders on the off chance that the divorce petition will be successful.

11. Moreover the Applicant has not demonstrated the existence of any special circumstances to warrant the issuance of the orders being sought. I find that this application for injunctive orders is premature. The Applicant ought to await the outcome/determination of her divorce petition. Finally no merit in this application. The same is dismissed in its entirety. No orders on costs.

**Dated in Nyeri this 17<sup>th</sup> day of April 2026.**

.....  
**MAUREEN A. ODERO**  
**JUDGE**