



SNC v HKJ (Civil Suit E012 of 2023) [2025] KEHC 1001 (KLR) (27 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1001 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CIVIL SUIT E012 OF 2023
RK LIMO, J
FEBRUARY 27, 2025**

BETWEEN

SNC PLAINTIFF

AND

HKJ DEFENDANT

RULING

1. SNC, the applicant herein vide a Notice of Motion dated 11/1/2025 has sought the following orders;-
 - i. That a mandatory injunction do issue against the respondent to vacate or move out of matrimonial home on L.R. No.Waitaluk/Mabonde Block 5/Kabulwet/xxx pending the hearing and determination of the matrimonial cause herein.
2. The grounds relied on are as follows;-
 - a. That the respondent is abusive and violent towards the applicant.
 - b. That welfare of the applicant and the children are endangered.
3. The applicant in her affidavit sworn on 11/1/2025 avers that the respondent is a former husband having divorced via judicial proceedings.
4. She avers that despite the divorce the two still reside in the same place and that as a result, the respondent has made her life difficult by being abusive, violent and has been threatening her to withdraw the matrimonial cause filed herein.
5. She avers that the respondent has been beating her and shouting at her in front of her children and that she has made reports to Sirende Police Station.
6. The applicant further complains that the respondent no longer eats her food claiming that she will poison or bewitch him.



7. She asks this court to issue restraining orders for the sake of her peace and interest of justice.
8. The respondent on the other hand has opposed this application vide a replying affidavit sworn on 21/2/2025.
9. The respondent avers that the applicant had moved out of the matrimonial home and only returned in December, 2023 upon a mutual agreement that they stay together for the sake of the children.
10. The respondent further claims that family members and a church elder have been instrumental in getting her back home adding that reconciliation is ongoing.
11. He denies the claims of violence stating that the two have been living together in peace and harmony despite the silence and tension between them.
12. The respondent accuses the applicant for lies and propaganda arguing that she is just interested in kicking him out of the matrimonial home.
13. He avers that he has not abused her or threatened her and further claims that there are no OB extracts to demonstrate that reports had been made to the police regarding his conduct towards her.
14. He avers that he respects women and children and cannot do any harm towards them adding that despite past provocation, he has acted with restraint. The respondent through counsel submits that all the allegations made against him are mere allegations, unsupported by evidence.
15. This court has considered this application and the response made. This is an application for injunction and the principles of injunction were well set out in the celebrated case of Giella –vs- Cassman Brown where the following criteria were spelt out:-
 - i. That an applicant must show a prima facie case with a probability of success.
 - ii. That an injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages.
 - iii. If the court is in doubt, it will decide the application on the balance of convenience.
16. There is no doubt that the applicant and the respondent are former wife and husband respectively who still reside together under one roof. The issue of division of the matrimonial property is the subject of this cause. It is not ripe and infact premature for this court to determine who should own L.R. Waitaluk/Mabonde Block 5/Kabulwet/xxx or even how the same should be divided. The element of a prima facie case cannot be explored at this stage suffices to state that the 2 are former spouses of each other.
17. The applicant alleges threats and abuse and violence from the respondent who has denied the same in equal measure.
18. What has caught the attention of this court is the averment by the respondent that he has begun reconciliatory efforts which saw the applicant go back to the matrimonial home having left there. The contention by the respondent is made on oath and the same is uncontested. The other issue raised on oath is that he is not a violent or an abusive person. He has challenged the applicant to provide any evidence of reports made to the police and none has been laid before me. So while I take threats to life and even abusive/disrespectful conduct seriously, this court finds no evidence to support the applicant's claims.



19. This court finds that the applicant probably went back to her matrimonial home because of reconciliatory efforts by the respondent or for the sake of her children which tilts the balance of convenience in favour of status quo rather than restraining the respondent from staying in the home.

The respondent however is directed to be civil towards the applicant and avoid any confrontation with her because violence or abusive behavior if true is counter-productive and quite unhealthy to do not only to both of them but children. So while I decline this application for the afore-stated reasons, I direct both parties to be civil towards each other as they either await the determination of this cause or find an amicable solution to their problems.

I will make no order as to costs and I order that a mention date be fixed for directions in the main cause.

DELIVERED, DATED AND SIGNED AT KITALE THIS 27TH DAY OF FEBRUARY, 2025.

R.K. LIMO

JUDGE

Delivered in open court in the presence of;

Risper Arunga for the plaintiff

Defendant/Respondent in person

