



**WW v JMM (Matrimonial Cause E004 of 2023) [2025] KEHC 7917 (KLR) (4 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 7917 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
MATRIMONIAL CAUSE E004 OF 2023  
RM MWONGO, J  
JUNE 4, 2025**

**BETWEEN**

**WW ..... APPLICANT**

**AND**

**JMM ..... RESPONDENT**

**RULING**

1. The applicant filed 2 applications dated 04<sup>th</sup> March 2025 (the First Application) and another one dated 06<sup>th</sup> March 2025 (the Second Application).

**The Application dated 04<sup>th</sup> March 2025.**

2. Through the First Application, she is seeking the following orders:
  1. Spent;
  2. That the court be pleased to find that the respondent, Johnson Muema Musomi, is in contempt of orders issued by the court on 7<sup>th</sup> November 2023, maintaining the status quo that Applicant to remain dwelling in matrimonial home on Land Parcel Reference Gaturi/Githimu/5XX9 while Respondent to remain dwelling in the matrimonial home in Makima, pending the hearing and determination of the Matrimonial Cause;
  3. That this Honourable Court be pleased to order the Respondent, Johnson Muema Musomi, to vacate the matrimonial home constructed on land parcel reference Gaturi/Githimu/5XX9 in Embu, which he has unlawfully invaded and/or trespassed upon and to return to the Makima residence per court orders issued on 7<sup>th</sup> November 2023;
  4. That this Honourable Court be pleased to issue a restraining order against the Respondent, Johnson Muema Musomi prohibiting him from coming within 50 meters of the property



located on land parcel reference Gaturi/Githimu/5XX9 in Embu, or any other place she frequents;

**In the Alternative,**

5. That the court be pleased to issue an order directing Johnson Muema Musomi to show cause why he should not be cited for contempt of court;
6. That the Honourable Court be pleased to commit Johnson Muema Musomi to civil jail for a period of 6 months or any other period or any other sanction it may deem fit and appropriate in the circumstances of the case;
7. That if orders 2,3 or 6 are granted, the honourable court be pleased to order the officer commanding Mugoya Police Station to ensure the enforcement of the order;
8. That this Honourable Court be pleased to issue a restraining order against the Respondent, barring him from selling, alienating, or in any way interfering with all matrimonial properties as listed in the Matrimonial Cause specifically including but not limited to the matrimonial home situated on Land Parcel Reference Gaturi/Githimu/5XX9 in Embu pending the hearing and determination of the instant Application;
9. That this Honourable Court be pleased to issue a restraining order against the Respondent, barring him from selling, alienating, or in any way interfering with all matrimonial properties as listed in the Matrimonial Cause specifically including but not limited to the matrimonial home situated on Land Parcel Reference Gaturi/Githimu/5XX9 in Embu pending the hearing and determination of the Matrimonial Cause;
10. That this Honourable Court be pleased to issue a restraining order against the Respondent, Johnson Muema Musomi prohibiting him from coming within 50 meters of the person of the Petitioner/Applicant;
11. That this Honourable Court be pleased to issue an order prohibiting the Respondent, Johnson Muema Musomi from threatening the life of the Petitioner/Applicant verbally or otherwise;
12. That the court be pleased to order the respondent, Johnson Muema Musomi, to cater for the costs of this application; and
13. That the court be pleased to issue any other order it deems fit in the circumstances of the case.
  1. The First Application is premised on grounds appearing on its face and in the supporting affidavit thereof.
  2. It is the applicant's case that since conclusion of the parties' divorce proceedings, the respondent has been continually threatening to forcefully evict the appellant from all their matrimonial home including the named one. Eventually, he succeeded in actualizing his threats and he has evicted the applicant, notwithstanding the fact that she has been living in that home since 2018, 5 years before the divorce was concluded. The applicant produced evidence to show that she reported the respondent's threat to kill her at the police station where she obtained an OB. She claimed that the respondent's actions have caused her to live in fear of her life, safety and dignity. She also claimed that the respondent has caused her psychological, emotional and physical health issues.



## The Application dated 06<sup>th</sup> March 2025.

5. Through the Second Application, the applicant is seeking the following orders:
  1. Spent;
  2. That this Honourable Court be pleased to order the Respondent, Johnson Muema Musomi, to vacate the matrimonial home constructed on land parcel reference Gaturi/Githimu/5XX9 in Embu, which he has unlawfully invaded and/or trespassed upon pending hearing and determination of this Application;
  3. That this Honourable Court be pleased to order the Respondent, Johnson Muema Musomi, to vacate the matrimonial home constructed on land parcel reference Gaturi/Githimu/5XX9 in Embu, which he has unlawfully invaded and/or trespassed upon pending hearing and determination of the Matrimonial Cause;
  4. That this Honourable Court be pleased to issue a restraining order against the Respondent, Johnson Muema Musomi prohibiting him from coming within 50 meters of the property located on land parcel reference Gaturi/Githimu/5XX9 in Embu pending hearing and determination of this Application;
  5. That this Honourable Court be pleased to issue a restraining order against the Respondent, Johnson Muema Musomi prohibiting him from coming within 50 meters of the property located on land parcel reference Gaturi/Githimu/5XX9 in Embu pending hearing and determination of this suit;
  6. That this Honourable Court be pleased to issue a restraining order against the Respondent, Johnson Muema Musomi prohibiting him from coming within 50 meters of the person of the Petitioner/Applicant pending hearing and determination of the instant application;
  7. That this Honourable Court be pleased to issue a restraining order against the Respondent, Johnson Muema Musomi prohibiting him from coming within 50 meters of the person of the Petitioner/Applicant pending hearing and determination of the instant Matrimonial Cause;
  8. That this Honourable Court be pleased to issue an order prohibiting the Respondent, Johnson Muema Musomi from threatening the life of the Petitioner/Applicant verbally or otherwise;
  9. That upon grant of the orders sought herein the Honourable Court be pleased to order the officer commanding Mugoya Police Station (O.C.S) Or the officer in charge of the nearest Police Station to oversee the enforcement of the orders sought and as would be granted;
  10. That the court be pleased to order the respondent, Johnson Muema Musomi, to cater for the costs of this application;
  11. That the court be pleased to issue any other order it deems fit in the circumstances of the case.
6. The Second Application is premised on grounds set out on its face and the supporting affidavit thereof.
7. The applicant stated that the respondent has been threatening to kill her and her children, a matter that she reported to the police. She stated that since 2018, the parties have been living in separate homes until conclusion of the divorce when the respondent threw her out of the named matrimonial home where she has been staying. She alluded to her rights under *the constitution* and urged the court to allow the application.



### **Affidavit by Evans Musomi in Support of the Applications.**

8. Evans Musomi, an adult son of the parties swore an affidavit dated 17<sup>th</sup> March 2025 in which he deposed that the relationship between his parents has remained sour since they started living separately in 2018. He stated that the respondent sent him a text message saying that it does not make sense for the applicant to continue living at the named matrimonial home.
9. He stated that the applicant drew a livelihood from her career as a nurse and also from her other endeavours as a farmer and businesswoman, and that she used her income to contribute to development of the matrimonial home. He stated that besides the house standing on land parcel reference Gaturi/Githimu/5XX9, the respondent has other homes he has access to and that he does not depend on that particular property alone for his shelter.

### **Replying Affidavit.**

10. The respondent, in his replying affidavit stated that the property is jointly registered to the parties herein and it is their matrimonial home. He stated that he works in different town and when he is in Embu, he stays at his named home, a fact that the applicant was well aware of. He denied that he has never accessed the home for the past 7 years. He deposed that the home has enough space for the parties to share without interfering with one another. He also produced a photograph of the house.
11. He stated that the applicant occupies the 1<sup>st</sup> floor of the said house while the respondent occupies the ground floor. He denied the allegation that he has been threatening the applicant and added that whatever report was made was investigated and he was cleared to access the house as usual. He stated that the applications filed by the applicant are only meant to delay the hearing, and he urged the court to dismiss them.

### **Further Affidavit.**

12. The applicant filed a further affidavit rehashing the grounds upon which both applications are premised. She produced screenshots of messages from the respondent threatening her with traditional mystical incarnations inferring death upon her and her children. There are also messages showing that the respondent had moved out of the said matrimonial home and that there were other matrimonial homes. He had allegedly married another wife with whom he is living. She also produced more documentary evidence of the properties.

### **Parties' Submissions.**

13. In her written submissions, the applicant relied on the provisions of Articles 40 and 45 of *the Constitution*, sections 6, 7 and 14 of the *Matrimonial Property Act* and the case of PWK v JKG (2015) eKLR. The applicant seeks that the respondent ordered her to vacate the house and as a result, that she needed protection in order to occupy the house peacefully. In any event, she submitted, the respondent had permanent exclusive access to the other matrimonial homes. Finally, she submitted that the respondent intends to alienate the property and he does not need to live in it.
14. On his part, the respondent relied on sections 12 and 14(b) of the *Matrimonial Property Act* and the case Kenya Breweries Limited & another v Washington O. Okeyo [2002] KECA 284 (KLR). He stated that this being a matrimonial cause, the parties have equal rights to the property. That the applicant is living in the said house with an undisclosed friend. He urged the court to focus on the substantive application because the applications herein seek orders of a final nature.



### **Issues for Determination.**

15. From the pleadings, the issues arising for determination are the following;
  1. Whether the Court should make an order injuncting the respondent from selling or alienating in any other way, land parcel number Gatari/Githimu/5XX9 and other properties pending determination of the matrimonial cause; and
  2. Whether the respondent should be held in contempt of court and sentenced to civil jail.

### **Analysis and Determination.**

16. The applications have been filed in the pendency of a matrimonial cause which is in the cause of hearing. The applicant has claimed that the respondent has been issuing death and eviction threats to her. She now seeks a restraining order against him. She produced evidence to prove that the death threats were reported to the police. The applicant is also apprehensive that the respondent, who has forcefully taken possession of the home and has evicted her, will alienate the property pending determination of the suit.
17. The respondent denied all these allegations and stated that he uses the ground floor of the house while the applicant uses the 1<sup>st</sup> floor. This position was also captured in the proceedings of the court when the applicant's Advocate submitted as such. The prayer that the respondent be ordered to vacate the house is prematurely sought since the ownership or fate of the property is yet to be determined through the matrimonial cause. In any event, it appears that both parties have access to the house. It is in the interest of justice that this position be maintained until the substantive suit is determined.
18. However, as to whether an order should be made restraining the respondent from alienating the property before the suit is determined, the principles in the case of *Giella v Cassman Brown* (1973) EA 358 ("Giella") apply. The threshold set by the case, is as follows:
  - i) Is there a prima facie case?
  - ii) Does the applicant stand to suffer irreparable harm?
  - iii) On which side does the balance of convenience lie?
19. The applicant has made out a substantial case that the respondent intends to commercialise the property. This was also deposed in the affidavit by Evans who produced a copy of a text message from the respondent indicating that he would prefer that the applicant should vacate the house so that it would be rented out for Kshs.50,000/= a month. These facts raise a prima facie case. In *Board of Management of Uhuru Secondary School v City County Director of Education & 2 others* [2015] eKLR the Court stated that:

“It is in my view not enough to merely establish a prima facie case and show that it is potentially arguable. Potential arguability is not enough to justify a conservatory order but rather there must also be evidence of a likelihood of success. The prima facie case ought to be beyond a speculative basis...”
20. If the property is alienated in any way, the applicant, who is a joint owner of the property, will suffer irreparable harm because the matrimonial cause is still pending. If eventually the property is determined and yet it has been alienated in any way, it is likely that the applicant will be greatly



inconvenienced. In the case of Paul Gitonga Wanjau v Gathuthi Tea Factory Company Ltd & 2 others [2016] KEHC 7263 (KLR), the court stated thus, regarding convenience:

“Where any doubt exists as to the applicants’ right, or if the right is not disputed, but its violation is denied, the court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which injury the applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right. The burden of proof that the inconvenience which the applicant will suffer if the injunction is refused is greater than that which the respondent will suffer if it is granted lies on the applicant.”

21. With this in mind, the Court is sufficiently persuaded that an order of injunction be issued against the respondent, restrained him from selling, or otherwise dealing in it alienating in any way. In fact, until such time as the matrimonial cause is determined, the injunction order should remain in place and it should cover all the properties in the cause.
22. On the issue of contempt and whether the respondent should be sentenced to civil jail, the applicant has not disclosed reasons why this court should consider that prayer. It would be unconscionable to hold the respondent in contempt at this point without being moved with sufficient grounds to make that finding.
23. Clearly, the nature of these matrimonial proceedings has invoked great hostility between the parties. The applicant has made her case against the respondent claiming a risk to her life and safety. That is not a trivial matter. However, it is noted that the respondent’s advocate told the court that the differences between the parties were intervened upon by family and the applicant allowed the respondent to occupy the house too. The applicant’s advocate did not contest this position.

### **Conclusions and Disposition.**

24. It would, therefore, be difficult to altogether issue a restraining order against the respondent from accessing the person of the applicant yet they share the matrimonial home in question, albeit using different floors of the house. As a result, and as stated earlier, the most apt position to hold is that status quo be maintained.
25. In the result, the applications partially succeed. The following orders are made:
  1. A temporary injunction is hereby issued restraining the respondent from alienating the land parcel reference Gaturi/Githimu/5XX9 and all other properties in the cause, until the substantive matrimonial cause herein is heard and determined;
  2. Pending hearing and determination of the matrimonial cause herein, both parties shall access the house built on land parcel reference Gaturi/Githimu/5XX9 in the manner described: the respondent using the ground floor of the house and the applicant using the 1<sup>st</sup> floor of the house;
  3. There shall be no order as to costs.
26. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 4<sup>TH</sup> DAY OF JUNE, 2025.**

**R. MWONGO**



## **JUDGE**

Delivered in the presence of:

Guantai holding brief for Kimanzi for Respondent

Ms. Onyiego for Petitioner

Francis Munyao - Court Assistant

