



**CS v GKR (Matrimonial Cause E003 of 2023)
[2023] KEHC 26854 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 26854 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
MATRIMONIAL CAUSE E003 OF 2023
JK SERGON, J
DECEMBER 20, 2023**

BETWEEN

CS APPLICANT

AND

GKR RESPONDENT

RULING

1. The applicant filed a notice of motion dated 7th November, 2023 seeking the following orders;
 - (i) Spent
 - (ii) That pending the hearing and determination of this Application, this Honourable Court be pleased to issue an order of injunction restraining the respondent from threatening the life of the Applicant together with her children G.K, D.C & J.K.R.
 - (iii) That pending the hearing and determination of the application herein an order be issued restraining the respondent from denying access and stay and/or otherwise restraining him from interfering with the Applicant’s peaceful occupation of That property comprised in LR No. Kericho/Kipchimchim/2866 and measuring one point of an acre.
 - (iv) That pending the hearing and determination of this application, an order of injunction do issue restraining the respondent, his servants and/or agents from alienating, disposing, wasting or otherwise selling That business popularly known as Mainet Cyber Cafe, along Tengecha Road within Kericho Town, together with all the equipment thereon.
 - (v) That pending the hearing and determination of this application and suit, an order does issue That all the proceeds received from That business popularly known as Mainet Cyber Cafe along Tengecha Road within Kericho Town be deposited in a joint account to be opened by both parties herein.



- (vi) That pending hearing and determination of the cause herein an order be issued restraining the respondent from accessing and/or staying on and or otherwise interfering with the applicants peaceful occupation of Kericho/Kipchimchim/2866 measuring approximately one point of an acre.
 - (vii) That the order of access of That property comprised in LR No. Kericho/Kipchimchim/2866 measuring approximately one point of an acre be implemented by the OCS Ainamoi Police Station
 - (viii) That this Honourable Court be pleased to make such other orders as may be appropriate to meet the ends of justice
 - (ix) the Respondent be condemned to pay costs of this application
2. The application is supported by grounds on the face of it and the supporting affidavit sworn by C.S. the applicant.
 3. The applicant avers That in 2017 she decided to purchase a parcel of land at Kipchimchim Area within Kericho County, she applied and secured a loan facility and subsequently entered into a sale agreement with Alphonse Kipkirui Koske (the vendor) to purchase the subject property with the intent to erect a home thereon.
 4. The applicant avers That she and the respondent had a fleeting romantic relationship in the past and sometime in 2019, the respondent resurfaced and they decided to solemnize their union, they entered into a civil marriage on 20th December, 2019 at the Deputy County Commissioner's Offices in Kericho.
 5. The applicant avers That upon the marriage the respondent who was unemployed at the time moved in with her and she set up a cyber cafe popularly known as Mainet Cyber Cafe along Tengecha Road within Kericho Town for the respondent.
 6. The applicant avers That sometime in 2020 she conceived the third child and the respondent herein started subjecting her to cruelty and physical abuse, she subsequently filed for divorce *vide* Kericho CMCC Divorce Cause No. E008 of 2023 and obtained a decree nisi and That upon the being served with divorce pleadings, the respondent chased her away with the children and to this date she has been forced to seek shelter from friends at Ainamoi Police Quarters despite the fact That she solely bought and developed the properties in question.
 7. The respondent filed a replying affidavit in response to the notice of motion dated 7th November, 2023.
 8. The respondent avers That the marriage between the applicant and respondent was irretrievably broken down as a result of the applicant being a serial cheater even upon several attempts to reconcile she still continued with her extra marital activities.
 9. The respondent avers That he met the applicant while stationed in Awasi, they lived together from 2014 to January, 2023 when the applicant moved out after he confronted her with evidence of cheating. The respondent avers That he visited the applicant home for the first time in 2014 for dowry negotiations with her family.
 10. The respondent maintained That he was the legal owner of LR NO. Kericho/kipchimchim/2866 vide a land sale agreement between Alphonse Kipkirui Koske (seller) and Gilbert Kiprono Rotich (buyer) and the applicant was merely a witness to the sale agreement. He maintained That all the utilities in



- the premises bear his name. He maintained That the property was acquired way before marriage hence was not matrimonial property.
11. The respondent maintained That he built the house through his own money and contributions from family members and friends. The applicant contributed on several occasions upon his request. He maintained That he left gainful employment to supervise the construction, he was therefore responsible for overseeing day to day progress, logistics of construction materials to the site and paying workers as the applicant was heavily pregnant at the time.
 12. The respondent maintained he solely set up Mynet Cyber sometime in December, 2015 and That his sister had contributed a substantial amount to set up the cyber and therefore the cyber was not subject to matrimonial property as it was acquired long before their marriage.
 13. The application dated 7th November, 2023 came up for inter partes hearing on 18th December, 2023 and counsel representing the parties made oral submissions.
 14. Mr. Mwita Learned Counsel for the applicant maintained That he would rely on the grounds of the notice of motion dated 7th November, 2023 and was seeking prayer 5, 6 and 7 of the notice of motion That the proceeds of Minet Cyber Cafe be deposited in a joint account to be opened in the name of the both parties and the respondent be restrained from accessing and remaining on the property known as Kericho/kipchimchim/2866. The Learned Counsel submitted That the applicant bought the cyber cafe and all the equipment in it. He further submitted That the land parcel in question was bought on 14th September, 2017 by the applicant prior to the marriage between the parties and therefore the said land parcel was not matrimonial property subject to the provisions of section 5 of the [Matrimonial Property Act](#). He further submitted That the applicant developed the property before inviting the respondent to live with her.
 15. The Learned Counsel submitted That court had power to allow one spouse to occupy the property when the court finds That they cannot live together and he cited the case of *G.K.S v G.M.B.B* [2020] eKLR where the court gave a restraining order to one of the properties in question. He therefore argued That no prejudice would be occasioned if the respondent is denied access to the property, the applicant is taking care of their children who are of tender years and has no place to live in after having been chased away by the respondent. He further submitted That it was very difficult to have parties who have parted ways due to irreconcilable differences live together.
 16. Mr. G.K.R. the respondent was present in person he stated That the application was opposed and he would be relying on the grounds in the replying affidavit he contended That despite the duplicity in sale agreements, the land search certificate is clear on the issue of land ownership of the land in question and That the water supply and electricity bills are in his name. He maintained That the cyber cafe was acquired before they got married. He admitted That she had made some contributions towards the house. The respondent contended That he was willing to give the applicant access to the house since their children were residing there. He contended the authenticity of the sale agreement That the applicant relied on in support of her case.
 17. Mr. Mwita Learned Counsel for the applicant submitted in response as follows That the electricity and water meters were applied for when the applicant was heavily pregnant and That the applicant has put in documents on how she acquired the property as to who drew up the sale agreement the issue can be settled at the trial of the originating summons herein.
 18. I have considered the pleadings and the oral submissions made by the parties in respect of the notice of motion dated 7th November, 2023 and I find That the sole issue for determination is whether the the properties set out in the instant application to wit land parcel LR Kericho/Kipchimchim/2866



- and Minaret Cyber Cafe are matrimonial properties, I find That the instant matrimonial suit is at its inception and hence it is premature to determine whether or not the above listed properties are matrimonial properties at this preliminary stage of the matter without subjecting it full trial.
19. I have considered the submissions by both parties and find That at this point in time this court is unable to ascertain whether or not the the properties listed are matrimonial properties and/or ascertain the claims of ownership by each of the parties. I have noted That each of the parties produced a sale agreement in a bid to prove That they had solely purchased the suit parcel prior to marriage and each of the parties also alluded to the fact they set up they cyber cafe prior to marriage and therefore the suit property and cyber cafe were not matrimonial property for purposes of this suit. I have also noted That the parties contributed to the development of the suit property, the extent of each party's contribution can only be ascertained and determined in the substantive matrimonial cause and not an interlocutory application such the one before this court.
 20. The parties were previously married and have since separated pursuant to divorce proceedings in Kericho CMCC E008 of 2023 obtained decree nisi hence the matrimonial properties cause is rightfully before this court. The parties herein have three issues arising from their union. The applicant submitted That upon serving the respondent with the divorce petition sometime in January, 2023 he chased her away from her matrimonial home and That she has control and custody of the three children and has had to seek refuge at Ainamoi Police Post. The respondent submitted That the applicant left the matrimonial home when he confronted her with evidence of serial cheating, however, he maintained That he was willing to grant the applicant access to the house for the sake of their children. I find That it is in the interest of justice to preserve the listed properties pending hearing and determination of substantive matrimonial cause and at the same time consider the wellbeing of the children borne by the parties herein.
 21. The Applicant had also sought for an Order restraining the Respondent from accessing and or staying on and or otherwise interfering with the Applicant's peaceful occupation of the suit premises when the Applicant left.
 22. The Respondent has averred in the Replying Affidavit That he never chased the Applicant and their children from the suit premises. He stated That the Applicant simply moved out on her own free will. I do not think the applicant moved on to freely from the suit premises. At the same time it is not also clear whether the Respondent forcefully evicted her from the house. The Respondent has expressly deposed in the Replying Affidavit That he is ready to welcome the applicant and the children to the property so long as she stopped threatening him. It would be utterly inconvenient and prejudicial to the Respondent to issue the order barring him from accessing or staying on the suit property. I decline to grant the Order.
 23. I make reference to rule 20 (2) of the *Matrimonial Property Rules* of 2022 which provides as follows; “ A party to the proceedings may, before or after commencement of the proceedings under these Rules, but before the final determination of the respective claims, apply for temporary injunctions or other interlocutory orders in accordance with Order 40 of the *Civil Procedure Rules*, 2010, and the court may grant the orders sought on such terms or conditions as may be just in the circumstances.”
 24. Accordingly, the notice of motion dated 7th November, 2023 partially succeeds and is allowed thus giving rise to issuance of the following orders;
 - (i) Pending the hearing and determination of this Matrimonial Cause, an order of temporary injunction is issued to restrain Gilbert Kiprono Rotich, the Respondent herein, from denying Chepngetich Siele, the applicant herein, access and stay and or interfering with the applicant's peaceful occupation of the property comprised in LR No. Kericho/Kipchimchim/2866.



- (ii) Pending the hearing and determination of this Matrimonial Cause, a temporary order of injunction do issue restraining the respondent, his servants and/or agents from alienating, disposing, wasting or otherwise selling That business popularly known as Mainet Cyber Cafe, along Tengecha Road within Kericho Town, together with all the equipment thereon.
- (iii) I hereby order That all the proceeds received from That business popularly known as Mainet Cyber Cafe along Tengecha Road within Kericho Town be deposited in a joint account in the joint names of both parties herein pending hearing and determination of the substantive matrimonial cause.
- (iv) In order to ensure That order No. (i) hereinabove is implemented. I direct the OCS Ainamoi Police Station to provide security and have the Applicant put into occupation of the suit pemises standing on LR No. Kericho/Kipchimchim/2866.
- (v) Costs of the motion to abide the outcome of the Originating Summons

DELIVERED, SIGNED AND DATED AT KERICHO THIS 20TH DAY OF DECEMBER 2023.

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J.K. SERGON

JUDGE

