



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

MATRIMONIAL CAUSE NO. 22 OF 2019 (OS)

IN THE MATTER OF SECTIONS 6, 7, 12, AND 17 OF THE MATRIMONIAL PROPERTY ACT, 2013

AND

IN THE MATTER OF AN APPLICATION FOR INJUNCTIVE ORDERS

BETWEEN

P.C.K.....APPLICANT

VERSUS

R.M.M.....RESPONDENT

RULING

1. The applicant P.C.K. and the respondent R.M.M. got married on 18th December 2005 at St. Luke’s ACK in Nairobi and the marriage was blessed with two children. The marriage was dissolved on 27th August 2019 by the Chief Magistrate’s Court at Milimani in **Divorce Cause No. 412 of 2013**.

2. In this originating summons filed by the applicant, there is a matrimonial property dispute over Mavoko Town Block Plot No. LR No. 55/** and Plot No. LR No. 55/** which the applicant stated that he solely bought and developed. The respondent’s response was that the two were properties that they jointly acquired during the marriage. The properties were registered in the name of the applicant.

3. Following an application dated 15th April 2019, and after *interparte* hearing, the court granted the following order: -

“(1) THAT an injunction be and is hereby issued restraining the respondent by herself, agents and/or employees or whomsoever is acting on her behalf from demolishing, transferring, selling, conveying, charging, leasing or in any way dealing with Mavoko Town Block Plot No. LR No. 55/ and Plot No. LR No. 55/** pending the hearing and determination of the originating summons.”**

4. The present application was dated 16th January 2021 by the applicant. It sought that the respondent be cited for contempt of orders of the court and be committed to civil jail for a term of 6 months and/or be ordered to purge the contempt by paying –

“the decretal sum as ordered on 9th December 2019 in the event the respondent does not show cause why contempt of court proceedings should not be commenced against her.”

5. The complaint contained in the grounds and in the supporting affidavit was that the respondent had defied the court orders by engaging contractors who had defaced and changed the outlook of the house, had refurbished the gate, changed locks to the house and had brought down his photographs and those of his children from the living room walls. The result was that the respondent had interfered with the preservation of the house on LR No. 55/**.

6. The respondent filed a replying affidavit to deny that she was in contempt of the injunction orders. In reference to the terms of the injunctive orders, she denied that she had demolished, transferred, leased, sublet, or sold the house. She stated that for one year before the

application, the applicant had stopped living in the house. She had been left here with the children. They have lived here since 2013. She stated that the applicant had come to the house and found she had brought a carpenter to fix their daughter's wardrobe. When he visited on 5th January 2020 he hurled abuses and threatened to evict the family from the house. He had visited in December 2019 and carried away the padlock to the small gate and the padlock to the main gate. Fearing for her security, she had borrowed a padlock from her sister to secure the gate. During the visit of 5th January 2020, the applicant had thrown away the framed photographs that the child had placed on the staircase wall. She denied that she had changed keys to the house, including the bedroom, and stated that the applicant is always able to access the house whenever he comes.

7. To prove contempt of a court order, the applicant was to show that the terms of the order were clear and unambiguous and were binding on the respondent, the respondent had knowledge of or proper notice of the terms of the order; the respondent had acted in breach of the terms of the order; and that the respondent's conduct was wilful had deliberate (**J.Z. Ochino and Another –v- George A. Okombo, Nairobi Civil Appeal No. 30 of 1989**).

8. There was no dispute that the terms of the injunction order were clear and unambiguous and that the respondent had knowledge of them. But had he disobeyed the terms of the injunction order? In dealing with the issue, I bear in mind that the standard of proof in contempt proceedings is higher than balance of probability but just lower than proof beyond reasonable doubt (**Mutitika –v- Baharini Farm Ltd [1985] KLR 229**). The rationale for this higher standard is because, although the court is dealing with a civil application the respondent stands the chance of going to jail if the wilful disobedience is proved. He stands the chance of losing his liberty.

9. The terms of the injunction were such that the respondent was not allowed to transfer, sell, convey, charge, or lease the house. She did none of these. She was also stopped from demolishing the house. Did she demolish the house? To demolish a house means to wreck, to raze, to destroy, to dismantle or to remove the house. Even assuming that the respondent refurbished the gate, removed photographs from the sitting room or changed the gate and door locks, these did not amount to demolishing the house. I find that the actions did not amount to the contempt of the injunctive order. Of course, the respondent denied the averments by the applicant and she had her own explanation of what had transpired.

10. In short, I determine that the application lacks merit and I dismiss it with costs.

DATED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JANUARY 2022.

A.O. MUCHELULE

JUDGE