



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**MATRIMONIAL CAUSE NO. E015 OF 2021 (O.S.)**

**IN THE MATTER OF MATRIMONIAL PROPERTY ACT**

**JGM.....PLAINTIFF**

**=VERSUS=**

**SK.....DEFENDANT**

**RULING**

[1] The Court has considered the application for injunction dated 28/5/2021 herein on the principles set out in *Giella Casman v. Brown* (1973) EA 358 and tempered in *American Cyanamid Co. v. Ethicon Ltd* (1975) A.C 396; 1 ALL ER 504. The parties are former spouses their marriage having been finally dissolved by a Decree Absolute of Divorce made on 23/1/2017 by Maua Senior Resident Magistrate's Court Divorce Cause No. 6 of 2015.

[2] The plaintiff/applicant seeks to restrain the defendant, former spouse from accessing, alienating or interfering with his occupation and enjoyment of named immovable properties, some which he claims were acquired after the defendant had deserted and some which he claims to have been gifted before entering into his marriage with the defendant, including the home where he lives with his new spouse. He also seeks to bar the defendant/respondent from making threatening social media communication to him and his spouse.

[3] Although some of the properties are registered in the names of the parties separately and jointly, each party has, pursuant to Matrimonial Property Act 2014, a right to claim co-ownership upon proof of contribution to their acquisition and or development. Being claims in immovable matrimonial property damages are not generally an adequate remedy. Accordingly, the balance of convenience test requires that the properties be preserved for the mutual benefit of the parties.

[4] The plaintiff/applicant has demonstrated by social media communication attachments to the affidavit in support of the application that he has a prima facie case for an order for injunction prohibiting the defendant/respondent from making any threatening communication to either the plaintiff/applicant or his wife as prayed in paragraph 6 of the Notice of Motion.

[5] Although the Defendant/Respondent states in her Replying Affidavit of 21/10/2021 that she is not opposed to the Plaintiff/Applicant remarrying but only to utilizing the matrimonial house on LR Ithima/Ntuenene/xxxx to which she claims to be legally entitled, the court has noted her threatening communication to the plaintiff/applicant and his wife by social media texts attached to the application.

[6] While the court agrees that the defendant/respondent is entitled to claim a share in the suit properties by way of contribution to the matrimonial property and development thereon, it must, in the interests of safety and security of the parties restrain the Defendant/Respondent in the interim and interlocutory stage from accessing the matrimonial house property Ithima/Ntuenene/ xxxx to avoid any violent confrontation that may ensue such access in view of the occupation thereof by the Plaintiff/Applicant and his new wife.

[7] The court shall for the same reason set the matter for expeditious hearing and determination of the parties' rights in the alleged matrimonial property.

[8] In the meantime, to preserve the property, there shall be inhibition orders placed on all the properties set out in the Plaintiff's application dated 28/5/2021.

**Orders**

[9] Accordingly, for the reasons set out above, the court grants the following orders:

1. An order of Interlocutory injunction as prayed in paragraph 3 of the Notice of Motion dated 28/5/2021 but limited to the matrimonial home on Ithima/Ntuenene/ xxxx pending the hearing and determination of the suit.

2. An order of injunction prohibiting the Defendant from making any threatening communication to the Plaintiff and/or his wife as prayed in paragraph 6 of the Notice of Motion.
3. An order of inhibition on each of the properties set out in paragraphs 5 of the Notice of Motion restricting all dealings, save for interests superior to the parties' rights thereon, pending the hearing and determination of the suit.
4. An Order for priority hearing of the suit and for that purpose, the pre-trial conference is set for 18/11/2021 and parties are directed to comply with pre-trial requirements under Order 11 of the Civil Procedure Rules.

[10] Costs in the cause.

*Order accordingly.*

**DATED AND DELIVERED THIS 28<sup>TH</sup> DAY OF OCTOBER 2021.**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances:**

M/S Kubai Orwa & Co Advoates for the Plaintiff/Applicant

M?S Mithega & Kariuki Advocates for the Defendant/Respondent.