



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MATRIMONIAL CAUSE NO. 29 OF 2019 (OS)

JKK PLAINTIFF

VERSUS

PMM DEFENDANT

R U L I N G

1. By an Originating Summons dated 4th November, 2019, the plaintiff sought orders for equal share of the properties acquired during their marriage with the defendant. Simultaneous with the originating summons, the plaintiff filed a Notice of Motion seeking inhibition orders against the properties known as **L.R. NOS. NTIMA/IGOKI/[...]** and **NYAKI /GIAKI/[...]**. She also sought a stay of the proceedings in **MERU CMCC ELC NO. 36 OF 2017** pending the conclusion of the originating summons.
2. There was no evidence in support of the Motion by way of a supporting affidavit. However, this Court will consider the averments in the affidavit in support of the Originating Summons as also supporting the Motion.
3. In her affidavit sworn on 4/11/2019, the plaintiff averred that her marriage to the defendant had irretrievably broken down resulting in divorce vide the **Meru Chief Magistrate Court Divorce Cause No. 33 of 2009**. That during the sustenance of their marriage, she had assisted in the acquisition of their matrimonial properties. That the defendant has, secretly and without her consent, been fraudulently disposing their matrimonial properties including but not limited to **LR. No. Nyaki/Giaki/[...], motor vehicles registration no. KQF [...], KAL [...], KAN [...], KAM [...], KBR [...], KAZ [...], KBK [...]**.
4. That the defendant has illegally sold **LR. NO. NTIMA/IGOKI/[...]**, the matrimonial home acquired by their joint effort, to one **Dolla Mugure Nthiga** which is the subject of the proceedings in **Meru CMCC ELC Case No. 36 of 2017**. That unless the respondent is restrained, he will sell the remaining land and motor vehicles before the summons is heard and determined.
5. The applicant annexed copies of the divorce judgment and copies of official search record for **NYAKI/IGOKI/[...]** and **NYAKI/GIAKI /[...]** in support of her application.
6. The defendant opposed the application through his replying affidavit sworn on 10th February, 2020. He averred that their matrimonial home was their family land at Ciothari area and not **LR. NTIMA/IGOKI/[...]** as alleged by the plaintiff. That their family land is **LR. NYAKI/GIAKI/[...]** which is registered in his father's name and the same is situate in Ciothari location. That **LR. NTIMA/IGOKI/[...]** is not his but is land belonging to a 3rd party. He denied ever owning motor vehicles **KAM [...], KBR [...], KAZ [...]** and **KCE [...]** That the other motor vehicles mentioned by the applicant no longer exist as he had long sold them to maintain his family.
7. Although the parties were directed to file their written submissions, none had filed any as at the time of writing this ruling.
8. This is an injunction application. The principles applicable are well established. An applicant should establish that he/she has a prima facie case with a probability of success; that if the orders sought are not granted he/she will suffer irreparable loss which would not be adequately compensated by an award of damages and if the court is in doubt, it will decide the application on balance of convenience (see **Geilla vs. Cassman Brown Ltd E. A 1973 pg. 358**). See also; **F N K v P K N [2014] Eklr**.
9. It is not in dispute that the parties were hitherto married but divorced vide the **Meru Chief Magistrate Court Divorce Cause No. 33 of 2009**.
10. Matrimonial property is defined under **section 6 of the matrimonial property Act ("the Act")** to mean: -

a) the matrimonial homes or homes;

b) household's goods and effects in the matrimonial homes;

c) any other immovable or movable property jointly owned and acquired during the subsistence of the marriage.

11. S.2 of the Act defines contributions as;

“Monetary and non-monetary contribution and includes:

- a) *domestic work and management of the matrimonial home.*
- b) *childcare*
- c) *companionship*
- d) *management of family business or property and*
- e) *work”.*

12. I have looked at the search records and the documentary evidence presented by both parties. It is clear that none of the two properties sought to be inhibited are still in the names of the defendant. He has no proprietary interest thereon.

13. NTIMA/IGOKI/[...] was admittedly sold to **Dolla Mugure Nthiga** and registered in her name on 15/6/2017 while **NYAKI/GIAKI** /[...] was sold and registered in the name of **Japheth Koome Nchebere** on 11/5/2012. The Court cannot at this stage invade the interests of 3rd parties who are not parties to these proceedings.

14. There was no allegation that the sale and transfers were fraudulent. Even if that was the case, the said parties should have been enjoined as parties and proper particulars of fraud pleaded and proved.

15. In this regard, I find that there is no prima facie case that has been established. Since the properties are registered in the names of 3rd parties who are not parties to the suit, no order of inhibition can properly issue against the properties.

16. Having found that the plaintiff has not established a prima facie case, no irreparable loss can be suffered as the properties are already in the names of 3rd parties. No order was sought to nullify the transactions leading to the acquisition of the titles thereto.

17. Further, I find that the balance of convenience tilts in favour of refusing the injunction as it will be inconveniencing 3rd parties if the orders sought are granted.

18. In the premises, the application is without merit and the same is hereby dismissed with costs.

DATED and **DELIVERED** at Meru this 18th day of June, 2020.

A. MABEYA

JUDGE