



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**

**MATRIMONIAL CAUSE NUMBER 11 OF 2017**

CNK.....PLAINTIFF

VERSUS

SKN..... DEFENDANT

**RULING**

1. By way of notice of motion dated 14/8/2017, CNK (applicant) seeks orders;

a) Spent

b) Spent

c) **THAT** pending hearing and determination of the originating summons, the defendant/respondent be restrained by way of an injunction by himself, his agents and or servants from selling, disposing off and/or in any other way adversely dealing with LR. No. Dundori/Lanet Block [xxxx] (Kiamunyi "A").

d) **THAT** costs of this application be provided for.

2. The application is premised on grounds;

a) That the plaintiff/applicant is a wife of the defendant since the year 2005.

b) That during the subsistence of the marriage the plaintiff and the defendant acquired several assets to wit;

i. LR. No. Dundori/Lanet Block [xxxx] (Kiamunyeki "A").

ii. Motor vehicle registration number KBF [xxxx] Mitsubish which was traded in with KBL [xxxx] Toyota Kluger but they were instead given motor vehicle registration number KBV [xxxx] Toyota Fielder.

iii. Household goods, sofa set, curtains and television set.

c) That the plaintiff and the defendant have been separated since the year 2014 to date and there is already a divorce cause pending determination in Nakuru Chief Magistrate's Court Divorce Cause No. 6 of 2017 between the parties herein.

d) That the plaintiff single handedly purchased LR. No. Dundori/Lanet Block [xxxx] (Kiamunyi "A").

e) That there is already threat of adverse dealing of the above assets.

f) That the defendant disposed of motor vehicle registration number KBV [xxxx] Toyota Fielder without the consent of the plaintiff.

g) That unless the orders sought are granted, the defendant may dispose of and/or deal adversely with the said parcel of land to the detriment of the plaintiff.

h) That the plaintiff and the defendant are joint registered owners of **LR. No. Dundori/Lanet Block [xxxx] (Kiamunyi "A")**

however the defendant is in exclusive use and control of the same including the title deed herein.

i) That the plaintiff has a prima facie case with high chances of success.

j) That no prejudice would be suffered as the orders sought would merely preserve the property herein until the real issues in the originating summons are heard and determined.

3. The application is further supported by the applicant's affidavit sworn on 14/8/2017.

4. The applicant's case is that she and the defendant are husband and wife. In the subsistence of the marriage, the applicant avers that they brought several properties and she lists them as;

(i) L.R. No. Dundori/Lanet Block [xxxx] (Kiamunyeke "A").

(ii) Motor vehicle registration number KBF [xxxx] Mitsubishi which was traded in with KBL [xxxx] Toyota Kluger but they were instead given motor vehicle registration number KBV [xxxx] Toyota Fielder.

(iii) Household goods, sofa set, curtains and television set.

5. It is her case that she brought property L.R. No. Dundori/Lanet Block [xxxx] (Kiamunyeke "A") but was forced to register the same as joint owners with the defendant after a beating.

6. She adds that she was the purchaser of motor vehicles registration numbers KBF [xxxx] (Mitsubishi), KBL [xxxx] (Toyota/Kluger) which motor vehicle was substituted with motor vehicle registration number KBV [xxxx] (Toyota Fielder) when the applicant was unable to complete the purchaser price for the Toyota Kluger.

7. She asserts that she was also the purchaser of various pieces of furniture over the time. It is her case that the respondents contribution to acquisition of matrimonial properties was negligible, if at all. She seeks preservation of the properties.

8. The application is opposed. It is urged that the issues raised before court are the same issues sought to be addressed in Nakuru CMCC Divorce Cause number 6 of 2014 which is still pending determination.

9. It is urged that this matter should be litigated through Nakuru CMCC divorce Cause Number 6 of 2014. Pleadings from Nakuru CMCC Divorce Cause Number 5 of 2014 are annexed.

10. The application was canvassed by way of written submissions.

11. Evidence has been offered before court of the existence of Nakuru CMCC Divorce Cause Number 6 of 2014. The issues raised in that suit and the parties are the same.

12. **Section 6** of the **Civil Procedure Act** is clear on the law applicable in the circumstances. It provides;

**"Sec. 6. No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.**

***Explanation.*—The pendency of a suit in a foreign court shall not preclude a court from trying a suit in which the same matters or any of them are in issue in such suit in such foreign court."**

13. It is improper for the applicant to litigate over the same issues with the same defendant in the Chief Magistrate's court and in this court.

14. The application and indeed the entire suit is improperly before court.

15. The suit is hereby struck out with costs to the respondent.

**Dated and Signed at Nakuru this 20<sup>th</sup> day of February, 2019.**

**A. K. NDUNG'U**

**JUDGE**