



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS APPLICATION NO. 22 OF 2019

PETER CHARLES KIRORI.....APPLICANT

VERSUS

ROSE MUTHONI MWAURARESPONDENT

RULING

1. The Application coming for consideration in this Ruling is the Applicant's Notice of Motion dated 15.4.2019 seeking the following orders:

(i) THAT the Application be certified urgent and service be dispensed within the first instance and it be heard ex-parte due to the urgency (SPENT)

(ii) THAT this Court be pleased to grant a temporary injunction 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. 55/336 and Plot No. LR. No. 55/337 pending the hearing and determination of this Application.

(iii) THAT the Court be pleased to issue any other order expedient in the circumstances and in the interests of Justice.

(iv) THAT costs be provided for.

2. The Application is based on the grounds on the face of it and supported by the Affidavit of the Applicant in which he has deposed as follows:

(i) THAT the Applicant got married to the Respondent on 18.12.2005 and were blessed with two children and separated in 2012 after the marriage irretrievably broke down and it was dissolved in Court on 27.2.2019 in Divorce Cause No. 412 of 2012.

(ii) THAT the Respondent has now locked him out of the Matrimonial Home rendering him homeless.

(iii) THAT he built the two houses single-handedly after he separated with the Respondent.

(iv) THAT the Respondent did not contribute to the process of construction or purchase of materials and furniture and neither did she offer him companionship, management of the home or Child care.

(v) THAT the title deeds of the Properties got lost and he has discovered that the Respondent has put cautions on both pieces of land and preventing him from dealing with them as he deems fit.

(vi) THAT the Respondent has gone ahead to deny him access to his properties and therefore his ability to access his own home has been curbed.

(vii) He is therefore seeking an injunction to stop the Respondent from dealing with the properties.

3. The Respondent filed a Replying Affidavit dated 17.7.2019 in which she deposed as follows:

(i) THAT she is the one who introduced the Applicant to one JOHNSON THUO after the initial introduction to one JOB RUIRU NJOROGE and she paid directly for the 1st parcel.

(ii) THAT she had the titles which are still in the names of JOHNSON THUO in her custody but the whereabouts are not known after Applicant made her to flee the Matrimonial home.

(iii) THAT during the subsistence of the marriage, this acquired and developed the properties together.

(iv) THAT after the birth of their first born son, she stayed home for three months and looked after him and also bought clothes diapers, food and paid the Nannies.

(v) THAT she also did the same when their daughter was born and she took the two children to school and paid fees.

(vi) THAT to date she is the one staying with the two children.

(vii) THAT he started building the Matrimonial Home when she was expectant with the 2nd child.

(viii) THAT she took loans and contributed to the construction of the houses.

(ix) THAT they also built a house at KATAKWA Village in Teso on a piece of land allocated by her late father in law of three acres during their wedding on 18.12.2005.

(x) THAT she is apprehensive that the Applicant may proceed to sell the aforesaid properties.

4. The Parties filed written submissions in the Notice of Motion dated 15.4.2019 which I have duly considered.

5. The conditions for grant of an injunction were set out in the case of GIELLA VS. CASSMAN BROWN & CO., LTD. [1973] E.A. 358 at p. 360 where it was stated:-

“First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience (E.A. INDUSTRIES VS. TRUFOODS [1972] E.A. 420.)”

6. With reference to the establishment of a prima facie case, Lord Diplock in the case of American Cyanamid vs Ethicon Limited [1975] AC 396 stated thus,

“If there is no prima facie case on the point essential to entitle the plaintiff to complain of the defendant’s proposed activities that is the end of any claim to interlocutory relief. The object of an interlocutory injunction is to protect the plaintiff against injury by violation of his right which he would not adequately compensate in damages recoverable in the action if the uncertainty has resolved in his favour at the trial.”

7. In the current case, I find that the ownership of the two parcels is contested and it is in the interested of justice that the said parcels be preserved pending inter-partes hearing of the Originating Summons filed herein.

8. I accordingly allow the Notice of Motion in the following terms:

(i) 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. 55/336 and Plot No. LR. No. 55/337 pending the hearing and determination of the originating summons filed herein.

(ii) THAT the Originating Summons proceeds by way of Viva Voce evidence on a date to be taken by both parties.

(iii) THAT the parties do file and serve witness statements within 30 days of this date.

(iv) THAT the Costs of the Application to abide the Cause.

DELIVERED, DATED AND SIGNED IN OPEN COURT THIS 22ND

DAY OF NOVEMBER, 2019

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.