



**REPUBLIC OF KENYA**

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

**ENVIRONMENT AND LAND CASE NO.114 OF 2017**

**LN.....PLAINTIFF**

**VERSUS**

**ROO.....DEFENDANT**

**JUDGEMENT**

LN the Plaintiff herein filed this suit on 21<sup>st</sup> September 2017 seeking the main prayer that this Court issues an order inhibiting the registration transfer or sub-division of the land parcel No. [particulars withheld] (hereinafter the suit land).

The basis of her claim is that she and the defendant have cohabited as man and wife and are blessed with one child namely COO. That they have established their matrimonial home on the suit land which she fears the defendant wants to sell having sold all other parcels and misused the money and the suit land is now the only property remaining hence this suit.

The record shows that the defendant was served with the plaint summons to enter appearance and other document by a Court Process Server on 12<sup>th</sup> October 2017. However, the defendant did not enter appearance or file any defence. The defendant was further served by the same Process Server for hearing of the suit but did not turn up. The plaintiff's case is therefore not defended.

The plaintiff testified in support of her case and adopted as her evidence her witness statement dated 21<sup>st</sup> September 2017 as well as her list of documents. She told the Court that she and the defendant are married under traditional customs and live on the suit land which is their only matrimonial property left after the defendant sold the other pieces of land and mis-used the money.

When she tried to place an inhibitory order on the suit land, the defendant remove it without her consent. She then moved to Court which ordered that the inhibitory order shall not be removed. It is not clear from her statement when the Court made the said order. Indeed, if any Court made any such order, then this suit was not really necessary.

However, these are some of the challenges that Courts get when dealing with lay persons who are nonetheless, entitled to their day in Court in accordance with the provisions of **Article 50 of the Constitution**.

My duty is made easier in this case however because the defendant did not file any defence to the plaintiff's claim.

**Section 68(1) of the Land Registration Act 2012** provides as follows:

***“The Court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge.”***

The Plaintiff's evidence is un-controverted. She has told the Court that not only is she the wife of the defendant but that they live on the suit land and have one child COO. In the absence of any other contradictory evidence, this Court must believe her testimony. As the wife of the defendant, she obviously has an interest in the suit land and is entitled to the order sought in the plaint particularly in view of her evidence that the defendant has sold other property and mis-used the funds.

Ultimately therefore, judgement is entered for the plaintiff against the defendant in the following terms:

- 1. An order is made inhibiting, until further orders of this Court, any dealings with land parcel [particulars withheld] including transfer, sub-division charging or leasing.**
- 2. No order as to costs.**

**BOAZ N. OLAO**

**JUDGE**

**22<sup>ND</sup> NOVEMBER 2018**

Judgement delivered, dated and signed in open Court this 22<sup>nd</sup> November 2018 at Bungoma.

Plaintiff – present

Defendant – Absent

**BOAZ N. OLAO**

**JUDGE**

**22<sup>ND</sup> NOVEMBER 2018**