



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

MATRIMONIAL PROPERTY CAUSE NO 4 OF 2016

P W K.....PLAINTIFF

VERSUS

S K M.....DEFENDANT

R U L I N G

1. In the originating summons filed on 08/06/2016 herein the Plaintiff, **P W K**, seeks against Defendant, **S K M**, certain declarations and orders in respect to the following properties which the Plaintiff pleads are matrimonial properties acquired jointly by the Plaintiff and the Defendant during subsistence of their marriage –

(i) LR LOC 19/GACHARAGE-INI/[...]

(ii) LR LOC 19/GACHARAGE-INI/[...]

(iii) LR LOC 19/GACHARAGE-INI/[...]

(iv) LR LOC 19/GACHARAGE-INI/[...]

The originating summons is pending disposal.

2. Together with the originating summons the Plaintiff filed **notice of motion dated 08/06/2016** by which she seeks a temporary injunction to restrain the Defendant from trespassing upon, disposing of, evicting the Plaintiff from, or in any other way interfering with her occupation of, the four parcels of land pending disposal of the originating summons. The application is supported by the Plaintiff's affidavit annexed thereto. It is word for word the same affidavit that supports the originating summons.

3. The Defendant has opposed the application by grounds of objection dated 20/06/2016 and a replying affidavit sworn and filed on 28/07/2016. To this affidavit are annexed several documents.

4. I have read the supporting and opposing affidavits, along with the documents annexed thereto. I have also considered the submissions of the learned counsels appearing.

5. The Plaintiff and the Defendant are an elderly couple. The Plaintiff is the Defendant's first wife, but there are divorce proceedings pending in another court. The Defendant has a second wife. Both wives have adult children with the Defendant.

6. What emerges from the material now before the court is a long-standing dispute between the Plaintiff and her children on one part, and the Defendant and the second wife along with her children on the other

part. The dispute appears precipitated by the usual dynamics obtaining in a polygamous family, especially as pertains to the family properties and how they should be shared out between the two households. It is a dispute that the family itself has tried to resolve with the assistance of the local administrators without much success. It is also a dispute that would be best solved by court-driven arbitration or mediation if the parties were amenable to the same.

7. Save for two parcels of land, LR LOC 19/GACHARAGEINI/[...] and [...] which, it is common ground, the Defendant inherited from his own father, the Defendant freely acknowledges that the other two parcels, LR LOC 19/GACHARAGEINI/[...] and [...], are matrimonial property acquired during the existence of his marriage to his two wives. But of parcels Nos [...] and [...], the Plaintiff claims that she has contributed to improvement of the same. However, parcel No [...] was transferred unto the name of the second wife. She is not a party to these proceedings.

8. Looking at all the circumstances now obtaining in this family, save an order to preserve the properties in contention, any other order as sought by the Plaintiff would only exacerbate the dispute between the Plaintiff and the Defendant and the rest of the family.

9. The order that commends itself to the court therefore is that the Defendant is hereby restrained from selling, transferring or otherwise disposing of, during the pendency of this suit or until the further order of this court, the following properties –

(i) L R LOC 19/GACHARAGEINI/[...]

(ii) L R LOC 19/GACHARAGEINI/[...]

(iii) L R LOC 19/GACHARAGEINI/[...]

The notice of motion dated 08/06/2016 will be allowed in the above terms. Costs of the application shall be in the cause. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 18TH DAY OF MAY 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 19TH DAY OF MAY 2017