

IN THE HIGH COURT OF KENYA

AT MURANG'A

MATRIMONIAL CAUSE NO 1 OF 2016

H W W.....APPLICANT

VERSUS

H B W.....RESPONDENT

RULING

1. In this suit the Applicant seeks certain declarations and orders under the *Matrimonial Property Act, 2012*. Together with the originating summons she filed **notice of motion dated 03/02/2016** seeking two main orders –

(i) To preserve the pleaded matrimonial property L.R. LOC 11/Maragi/3838 pending disposal of the suit.

(ii) That the “sale proceeds which was (sic) realized from the illegal sale of land parcel No. LOC.7/Ichagaki/2731 and sold to one ...NJAMBI JOHN GACHOKA be deposited in a joint account of the parties herein and be utilized for the benefit of the” parties or as the court may direct.

The application is supported by the Applicant’s affidavit annexed thereto.

2. The Respondent opposed the application by his replying affidavit filed on 13/05/2016.

3. I have read the supporting and opposing affidavits. I have also considered the submissions of the learned counsel for the Applicant. There was no appearance for the Respondent at the hearing of the application.

4. The need to preserve the suit property pending disposal of the suit cannot be gainsaid; otherwise the suit might be rendered merely academic. In this regard, the Respondent’s response that he does not intend to dispose of the suit property cannot be a sufficient safeguard. I therefore have no hesitation in granting prayer 1 of the application to restrain the Respondent from selling or otherwise disposing of or encumbering the property known as L.R. LOC 11/MARAGI/3838 pending disposal of this suit or the further order of the court.

5. As for prayer 2 of the application, I do not consider that a sufficient case has been made out to warrant the granting of the order sought, and the same is refused. It appears that the sale of the property L.R. LOC 7/ICHAGAKI/2731 took place in the year 2007 (some 10 years ago!) when she was registered proprietor thereof. 10 years is too long a period to try and trace the consideration paid, if any.

6. Costs of this application shall be in the cause.

DATED AND SIGNED AT MURANG'A THIS 29TH DAY OF JUNE 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 30TH DAY OF JUNE 2017