



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT ELDORET

ENVIRONMENT AND LAND CASE NO. E018 OF 2021(O.S)

AKK.....PLAINTIFF/APPLICANT

VERSUS

JK *alias* MJ.....DEFENDANT/RESPONDENT

RULING

1. This is a ruling in respect of a Notice of Motion dated 2/6/2021 in which the Plaintiff/Applicant seeks the following orders:-

1. *Spent*

2. *Spent*

3. *That pending hearing and determination of this application and main suit, the respondent herself, her agents and or servants be a restrained by order of temporary injunction from entering, invading, encroaching, trespassing, constructing, transferring, leasing, charging, alienating, damaging and/or in any manner dealing with the plaintiff's/Applicant's property and/or interfering with enjoyment of rights over that parcel of land known as UASIN GISHU/ILLULA SETTLEMENT SCHEME/879.*

4. *The costs be provided for.*

2. The Applicant and Defendant/Respondent were married on 26/6/2002. On 26/7/2007, the couple decided to mutually divorce in accordance with a divorce agreement entered on 24/7/2007. A day before the divorce agreement was made, a sale agreement was drawn in which the Applicant and the Respondent were to purchase a portion of 7¹/₂ acres out of LR No Uasin Gishu/ Illula/xxx at a consideration of Kshs 1,350,000. This agreement was however not signed by the two.

3. The Respondent later pursued the sale transaction after divorce and had the original title subdivided wherein she became the registered owner of LR Uasin Gishu/Illula Settlement Scheme/879 (Suit Property).

4. The Applicant contends that he contributed equally towards the purchase of the suit property. As the former couple were residing in the United States of America (USA), the agreement was sent to the USA. The Applicant signed his part and forwarded the same to the Respondent to sign her part.

5. The Applicant contends that it had been agreed that the title was to be processed in the joint names of the two but that in 2019, the Applicant discovered that the Respondent had processed title in her own name. The two resolved through an agreement dated 22/12/2019 that the suit property was going to be registered in the joint names of the two. The Respondent signed transfer forms but she declined to sign forms for Land Control Board consent to effect the transfer.

6. The Applicant now contends that the Applicant has re-married and that she is intent on selling the suit property to defeat his interest in the same. The Applicant contends that he contributed towards the purchase price by sending money to his sister-in-law RK who is the Respondent's sister. It is on this basis that the Applicant is seeking an injunction against the Respondent.

7. The Respondent opposed the Applicant's application based on a replying affidavit sworn on 30/7/2021. The Respondent contends that she purchased the suit property after they divorced with the Applicant. She contends that the Applicant cannot claim that the suit property was jointly purchased with a view to setting up their matrimonial home yet the two were in the process of divorce. The Respondent states that the agreement for sale which the Applicant sent to her for signature was not signed by her as she had started saving money in 2004 when their marriage started developing cracks.

8. The Respondent argues that if the Applicant sent any money to her sister, then the money was for purchasing tickets as her sister operated a tour company. She further argues that as the two had divorced, the mere fact that the two continued being occasionally intimate did not revive the broken marriage and that the Applicant's insistence on being around her life after divorce was an indication of a man who did not want to believe that the marriage was over and that the Respondent was at liberty to do her own things.

9. The Respondent contends that the purported land resolution agreement dated 22/12/2019 is a forgery as she did not sign the same. She also denied signing a transfer of an interest in land arguing that she has never appeared before an attorney known as Gloria A. Spence in the USA.

10. The parties were directed to file written submissions. The Applicant filed his submissions dated 4/10/2021. The Respondent filed her submissions dated 15/10/2021. I have carefully considered the submissions by the parties herein. There is only one issue for determination in this application. This is whether the Applicant has demonstrated that he has a prima facie case with probability of success to warrant issuance of an injunction.

11. There is no contention that the suit property is registered in the name of the Respondent. There is also no contention that the sale agreement was made a day before the mutual agreement to divorce was made. The divorce was made final on 25/6/2007 when the mutual divorce agreement of 24/7/2007 was adopted.

12. It is also not contested that the Respondent declined to sign the sale agreement. The principles for grant of an injunction were well set out in the celebrated case of **Giella -vs Cassman Brown & Co Ltd [1973] EA 358**. First, an Applicant has to demonstrate that he has a prima facie case with probability of success. Second, an injunction will not be given unless the Applicant will suffer loss or injury which will not be capable of being compensated in damages. Third, if the court is in doubt, it will decide the application on a balance of convenience.

13. From the materials placed before the court, the parties herein had mutually decided to divorce. The mutual agreement for divorce was penned on 24/7/2007. This shows that parties had been discussing over the issue prior to this date. The sale agreement the basis upon which the Applicant seeks a stake on the suit property was made on 23/7/2007 a day before the signing of the mutual agreement for divorce. The Respondent declined to sign the sale agreement.

14. The Respondent processed all documents pertaining to the suit property after divorce. In the circumstances, I do not see what prima facie case the Applicant has to warrant issuance of an injunction.

15. The Applicant appears to have continued to spend money towards the improvement of a property registered in the name of the Respondent with whom he had divorced. The Respondent became a free woman on 27/7/2007 and even if the applicant had a baby with her in 2010, this did not revive the marriage. The marriage which had been dissolved could only be revived by a re-marriage of the two. Whatever money which may be found due as contribution if any towards the purchase is ascertainable and the Applicant can be compensated if it turns out that he contributed any money or at all.

16. Even if this court were in doubt, the balance of convenience tilts in favour of the Respondent who has title over the suit property and who is in occupation. I therefore find no merit in this application which is dismissed with costs to the Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 20TH DAY OF JANUARY, 2022.

E. OBAGA

JUDGE

In the virtual presence of:

Ms. Cheptinga for Applicant

Ms. Lagat for Respondent

Court Assistant – Mercy

E. OBAGA

JUDGE

11/2/2022