



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**ORIGINATING SUMMONS NO. 25 OF 2016**  
**IN THE MATTER OF SHARING MATRIMONIAL PROEPRTY**  
**AND**  
**IN THE MATTER OF MATRIMONIAL PROPERTY ACT 2013**  
**BETWEEN**  
**S K ..... PLAINTIFF**  
**Versus**  
**H K ..... DEFENDANT**  
**RULING**

**Preservation of matrimonial property**

[1]The application dated 18th October, 2016 is seeking for an order of prohibition upon P/No. *[Particulars withheld]* Akaiga Adjudication Section; P/No. *[particulars withheld]*, *[particulars withheld]* and *[particulars withheld]* Antuamburi Adjudication Section; Motor vehicle registration No. *[particulars withheld]* X and *[particulars withheld]* D. The applicant also seeks for a temporary injunction against the respondent to restrain him or his agents and servants from transferring or seeking any of the above properties whatsoever during the pendency of this matter. In addition, the applicant seeks for impounding of the two vehicles for safe custody by OCS Mikinduri Police station until this matter is heard. The application is supported by the affidavit of the applicant and other grounds set out in the application.

[2]The Applicant averred that she has immensely contributed to the purchase of the properties above and is entitled to 50% of those properties. But now the two are embroiled in a divorce proceeding and while those proceedings are pending she is apprehensive that the respondent may sell or dispose of the said property to third parties, thus, prejudice her rights herein. She therefore prays for preservation of the matrimonial properties. In her affidavit, the Applicant has detailed how the two acquired these properties; except that they registered in the name of the Respondent.

**Respondent opposed application**

[4]The Respondent opposed the application through a replying affidavit. In the said affidavit the Respondent averred that he is the absolute registered owner of the said property namely Nos. *[particulars withheld]*, *[particulars withheld]* and *[particulars withheld]* Adjudication Section. He however deposed that he does not own P/No. *[particulars withheld]* Akaiga Adjudication Scheme. He also denied his neither owner of the motor vehicle *[particulars withheld]* D nor registered owner of motor vehicle reg.no.

**[Particulars withheld]** X. He stated that **[particulars withheld]** D belongs to his brother J K. According to him he is a business man operating a shop and beer sales from whose proceeds he purchased his properties. He called the applicant a mere housewife who has not contributed anything towards the acquisition of his properties. He averred that he has employed 4 people who normally run his shops. He therefore contended that there is no direct or indirect contribution of the applicant towards acquisition of these properties and that is why they were not registered in their joint names.

[5] The Respondent accused the applicant of stealing his money meant for business which she used to buy a plot at Mikinduri on which she has constructed premises. On the basis of the above he beseeched the court to deny her application.

## **DETERMINATION**

[6] This is an application for preservation of properties which the applicant claims to be matrimonial property. It is not in dispute that the Applicant is the wife of the Respondent and therefore a spouse for purposes of Matrimonial Property Act. But, the two are now embroiled in divorce proceedings. From the facts presented in the affidavits, the properties in question were acquired during their marriage and by law such property becomes subject of Matrimonial Property Act. The Applicant on the one hand, claims to have substantially contributed towards the acquisition of the properties herein from the proceeds of the shop and beer sales- businesses she claimed to have been running before trouble started and was chased away by the Respondent. On the other hand, the Respondent claimed that the applicant was a mere house wife and so she contributed nothing, directly or indirectly, towards the acquisition of the properties in issue. Here I must remind that “*contribution*” under the Matrimonial Property Act means:

“ . . . **monetary and non-monetary contribution and includes**

**(a) domestic work and management of the matrimonial home;**

**(b) child care;**

**(c) companionship;**

**(d) managements of family business or property; and**

**(e) farm work.**

Therefore, the respondent’s argument that the applicant was a mere house wife and did not contribute anything, indirectly or directly, towards the acquisition of the properties in issue is neither here nor there; it will have to pass the test of the law at the trial. From the disclosed facts, I note also that the businesses herein were run for the benefit of the family herein; and it matters not whether it was run by both or either spouse. The Respondent clearly stated that income thereof was used to purchase the properties in question which the Respondent in his affidavit recognizes “*is the inheritance for my children*”. Again, from facts available the marriage herein was blessed with two children namely; (1) E M aged 10 years and (2) F M aged 4 years. Accordingly, although the properties herein are registered in the name of the respondent, on prima facie basis, the applicant has been able to bring the properties herein within the rebuttable presumption under section 14 of the Matrimonial Property Act that the property is held in trust for her. Therefore, her interest in the properties herein is one which is capable of protection by caveat, caution or otherwise under the law. The record produced in the affidavit herein show that all the landed properties herein are registered in the name of the Respondent. Accordingly, an order of prohibition and restriction upon these landed properties is deserved.

[6] As for the vehicles, I am aware that the registered person is the prima facie owner of the vehicle except that presumption may be rebutted by other evidence. Thus, although vehicle registration number **[particulars withheld]** D is registered in the name of the Respondent’s brother, one J K, the evidence presented in the affidavit of the Applicant is believable and a rebuttal of that assertion by the Respondent. As for the other vehicle **[particulars withheld]** X the records from the Registrar show that the owner is

Equity Bank and H K, the Respondent herein. Therefore, denial by the Respondent that he is not the owner of this vehicle is a complete lie. These vehicles are in the custody of and use by the Respondent. Accordingly, apprehension that these vehicles could be interfered with is quite high and a real possibility. Any such eventuality will irreparably affect the interest of the Applicant in these vehicles. As such, an order of injunction against the Respondent is also merited. I will, however, defer my decision on the request for impounding the vehicles until I give the parties an opportunity to inform the court the best way of preserving these vehicles.

## **Orders**

[7]The upshot of the above analysis is this. These properties need to be preserved to avoid one of the parties becoming a holder of a barren result. Accordingly, I issue the following specific orders:-

(1)An order that inhibition and restriction shall be registered in the landed properties as well as the vehicles namely P/No. **[Particulars withheld]** Akaiga Adjudication Section; P/No. **[Particulars withheld]**, **[particulars withheld]** and **[particulars withheld]** Antuamburi Adjudication Section; and Motor vehicle registration No. **[Particulars withheld]** X and **[particulars withheld]** D, respectively;

(2)An order of injunction restraining the Respondent from transferring, or selling or disposing of or in any manner dissipating the properties herein namely P/No. **[Particulars withheld]** Akaiga Adjudication Section; P/No. **[Particulars withheld]**, **[Particulars withheld]** and **[Particulars withheld]** Antuamburi Adjudication Section; and Motor vehicle registration No **[particulars withheld]** X and **[particulars withheld]** D.

(3)An order of impounding the vehicles is postponed until parties address the court on the best way of preservation of the vehicles herein.

**Dated, signed and delivered in open court at Meru today 21<sup>st</sup> November, 2016**

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**F. GIKONYO**

**JUDGE**

**In the presence of:**

Applicant – present

Mokuu for Nyamokeri for applicant

Muthamia & Kiogora for Anampiu for respondent.

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**F. GIKONYO**

**JUDGE**