



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
ELC CASE NO 624 Of 2013

RESHO WAITHIRA NDUNGUPLAINTIFF

VERSUS

FRANCIS NDUNGU KINGORIDEFENDANT

RULING

(Application for injunction; plaintiff being wife to defendant and alleging that the defendant is holding certain property in trust for her; averment that property was purchased through the industry of the plaintiff; application not opposed by defendant; prima facie case established; application allowed)

The application before me is that dated 8 May 2014 filed by the plaintiff. It is an application seeking orders to have an order of inhibition placed against the title Nyandarua/Ndemi/455 (the suit land), and orders of injunction to restrain the defendant from causing any further sale, sub-division, charging, cutting down trees, or in any other way interfere with the suit land. Despite being given time to respond to the said application, the defendant has not filed any papers to oppose it.

The suit itself was filed on 20 November 2013 by way of plaint. The case of the plaintiff is that she got married to the defendant in the year 1968 under Kikuyu Customary Law. They settled in Ol Kalou township where the plaintiff set up a successful tailoring business. The defendant was at the time unemployed. The plaintiff through her industry, acquired the suit land which was then under the Settlement Fund Trustees (SFT). She paid the money due to the SFT but had the land registered in the name of her husband. They moved into the land which became their matrimonial home. The plaintiff single handedly raised their five children until the year 1986 when the defendant got employed as an Assistant Chief. The plaintiff avers that they have had marital issues and the defendant has married two other wives. It is said that he has now started selling the land which the plaintiff claims is matrimonial property. The plaintiff is apprehensive that the defendant may sell the whole property to her detriment and that of her children. In the suit, she has sought the following orders :-

- (a) A declaration that the defendant holds the suit land in trust for himself and the plaintiff and a trust be registered against the said title.*
- (b) The defendant be ordered to allow the plaintiff to settle and cultivate 1/2 share of the suit land.*
- (c) A permanent injunction do issue restraining the defendant from sub-dividing, selling, charging, transferring or dealing with the suit land without the plaintiff's consent.*
- (d) Costs of the suit plus interest.*
- (e) Any other or further relief that may be deemed fit and just to grant.*

As I earlier stated, the defendant has not responded to this application. Neither has he filed any defence to the plaintiff's claim. The material before me is therefore only that tendered by the plaintiff. The principles governing the issuance of orders of injunction were laid out in the case of *Giella v Cassman Brown (1973) EA 358*, where it was stated that an applicant needs to demonstrate a prima facie case, that the court needs to be alive to the tenet that an injunction will not normally be granted unless damages are an inadequate remedy, and finally, if in doubt, the court will decide the matter on a balance of convenience.

The plaintiff has stated that she is the one who purchased the property but had the same registered in the name of the defendant and therefore that the defendant holds the same in trust for her. If this is the case then it cannot be that the property is wholly that of the defendant. I think the plaintiff has laid out a prima facie case with a probability of success. Of course, if the defendant is allowed to dispose of the land, then the subject of litigation will be lost and the plaintiff stands to suffer irreparable loss. The balance of convenience also lies in preserving the property.

The upshot of the above is that I find merit in the plaintiff's application. I allow it and issue the following orders :-

(1) That pending the hearing and determination of this suit, an order of inhibition be registered against the land parcel Nyandarua/Ndemi/455 inhibiting the registration of any disposition in the register of the said land parcel.

(2) That pending the hearing and determination of this suit, the defendant is hereby restrained by an order of injunction from offering for sale, sub-dividing, leasing, charging, cutting down trees, wasting, or in any other way, dealing adversely with the land parcel Nyandarua/Ndemi/455.

3) That costs of this application be costs in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAKURU THIS 21ST DAY OF JANUARY 2015.

MUNYAO SILA

JUDGE

Presence of :-