



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

CIVIL SUIT NO. 74 OF 2013

IN THE MATTER OF SECTION 17 OF THE MARRIED WOMEN PROPERTY ACT (1889)

A W M.....PLAINTIFF

VERSUS

M M N..... DEFENDANT

RULING

1. The applicant in her application dated 23rd September 2014 seeks the following orders;
 - i. Spent
 - ii. Spent
 - iii. Spent
 - iv. That the honorable court be pleased to grant a temporary injunction restraining the defendant, his servants and or agents or otherwise howsoever from uprooting food crops, cutting down trees damaging, wasting, transferring, disposing, selling, alienating or otherwise whatsoever dealing in all that piece of property known as L.R. No. Githunguri/Gathangari **[particulars withheld]** and or nay or all improvements and developments thereon pending the hearing and determination of this application.
 - v. That the honorable court be pleased to grant a temporary injunction restraining the defendant, his servants and or agents or otherwise howsoever from uprooting food crops, cutting down trees damaging, wasting, transferring, disposing, selling, alienating or otherwise whatsoever dealing in all that piece of property known as L.R. No. Githunguri/Gathangari **[particulars withheld]** and or nay or all improvements and developments thereon pending the hearing and determination of this suit.
 - vi. That the Court be pleased to compel the defendant to deliver the Greenleaf and/or tea from Githunguri/Gathangari **[particulars withheld]** to Karirana Estates Limited.
 - vii. In the alternative the plaintiff be allowed to pick green leaf tea from the half acre out of Githunguri/Gathangari **[particulars withheld]** pending the hearing and determination of this application
 - viii. That the Honorable Court order that the money and/or net proceeds for green life delivered to Karirana Estate Limited be released to the plaintiff as her share of the Greenleaf proceeds payable for the period 2013 and 2014.
 - ix. That the court orders that the plaintiff is allowed to order that the plaintiff is allowed to use and/or cultivate one acre out of the parcel of land known as Githunguri/Gathangari **[particulars withheld]** where the plaintiff's school was situated pending the hearing and determination of the suit.

2. The application is premised on the grounds that the plaintiff and defendant are lawfully married and Githunguri/Gathangari **[particulars withheld]** is their matrimonial property which she has extensively developed. She states that she was evicted from the matrimonial home by the defendant and was currently renting a single room in Githunguri with no livelihood. She states that the defendant has since demolished the plaintiff's school buildings and cut mature trees planted by the plaintiff without any just cause. That Karirana Estates Limited was holding and or retaining part of the proceeds of green leaf delivered for the period of 2013 and 2014 as she was suffering and unable to fend for herself in her old age despite her investing on Githunguri/Gathangari **[particulars withheld]** and that the defendant was destroying the plaintiff's investments in the parcel of land known as Githunguri/Gathangari **[particulars withheld]**.
3. In her affidavit she stated that that she took a loan of Kshs.800,000/- from the employer to educate her children through primary secondary and tertiary institutions. In 1983 she contributed Kshs. 200,000/- for filing a succession cause in the matter of the estate of L N Thika law courts as a result of which her husband's family was awarded 2.8 acres with her husband getting 2 acres and was subsequently issued a title deed for the parcel known as L.R. Githunguri/Gathangari **[particulars withheld]** at the time the land only had about 200 bushes. Between 1997 and 2007 she secured several loans from her employer which she used to construct a permanent stone house, dig a bore hole and plant 3000 tea seedlings. Later in 2007 she received Kshs. 500,000/- benefits from County Council of Limuru which she used to construct three small permanent classrooms on a ¼ acre. In 2009 she constructed 5 more classrooms and equipped it with desks, chairs and blackboards. By 2014 she had established baby class, nursery class and pre-unit and classes 1-4 all at an estimate of Kshs.1,000,000/-. Between 2010 and 2011 she fell out with her husband and his unmarried sisters and she was denied access to the farm causing her to buy food and fodder crops and when she defied orders the respondent would chase her with crude weapons. In 2012 on learning her husband's intention to secure a loan using the said farm as collateral she registered a caution on the said parcel of land. This annoyed the respondent resulting him to disconnect power, remove exit doors and main gate on realizing that she was not leaving he put harmful chemicals in her bedroom making it uncomfortable to stay. On 28th May 2013 the defendant beat her up and she was rushed to Githunguri Hospital and transferred to Kiambu District Hospital. Subsequently on 29th May 2013 the defendant and his sister's chased away the students and teachers and on her release from hospital she could not get access to the matrimonial home forcing her to rent a single room. She added that between May 2013 and February 2014 the defendant had received Kshs. 49,204.80 leaving Kshs. 55,381/- which she urged the court to release to her. She argued that if the defendant is not restrained he will continue to destroy, waste, interfere and dispose off the development on the suit land.
4. The application was unopposed.
5. The matter was heard on 15/1/2025. The applicant through her counsel indicated that they had 7 children who were adults and that at the time of filing the suit the parties only had one property the land in issue which is registered in the defendant's name. She argues that she has contributed greatly to the development of the said property. The applicant has no income as her income came from the school she was running and has nowhere to stay after being chased from the matrimonial home.
6. The law on granting injunction is well settled. In the case of ***Giella versus Cassman Brown E.A. (1973)*** "the applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally grant unless the applicant might otherwise suffer irreparable injury, which cannot be adequately be compensated by an award of damages. Thirdly if the court is in doubt it will decide an application on the balance of convenience.
7. The applicant submits that the said property was acquired and improved using the resources of the applicant after the celebration of the marriage and as such constituted matrimonial property. She relied on the case of ***M & M (2008) 1KLR***, where the property is inherited or gifted to one spouse but improved using matrimonial resources which increase value, such property will be

considered as contribution by the spouse.....will fairly be shared as matrimonial property.

8. It was her submission if the defendant is not restrained the plaintiff will suffer great irreparable loss and damage which will not be adequately compensated by an award of damages. The applicant solely depends on the sale of green leaf and fruits. The defendant is unemployed and is not a man of means and will not be in a position to refund the plaintiff any monies used in the exclusion of the plaintiff as he is destroying the development with the intention of frustrating the plaintiff and rubbish her efforts for the last 30 years.
9. The applicant submits that she is entitled to at least half of the suit property and seeks the court to allow her cultivate, use and pick green leaf from the said farm. She relied on the case of **T –vs- W (2008) 1KLR** “ *the applicant has established on a balance of probabilities that she is entitled to half the share of the suit property by virtue of the fact that it comprised her matrimonial property and further she has substantially contributed to its development and improvement.*”
10. The suit property was inherited from the respondent’s father after the parties were married and has given viva voce evidence of her contribution to the development and improvement of the said parcel of land by planting and cultivating green leaves, fruits and other food crops. Matrimonial Property Act (Act No.49 of 2013). Section 6(1) of the Act defines matrimonial property as follows:

“(1) For the purposes of this Act, matrimonial property means-

the matrimonial home or homes; household goods and effects in the matrimonial home or homes; or any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.”

11. The applicant in her affidavit stated that she used her salary and terminal benefits and proceeds from the sale of farm produce, green leaves and fruits in developing the parcel no. L.R. Githunguri/Gathangari **[particulars withheld]**. The defendant did not file any replying affidavit rebutting the same in this regard I find that the applicant’s averments were not controverted. From the definition of what constitutes matrimonial property given by Section 6(1) of the Matrimonial Property Act, the property L.R. No. L.R. Githunguri/Gathangari **[particulars withheld]** will fall within the category of properties defined as matrimonial properties.
12. In essence what the applicant is seeking is for a temporary injunction against the respondent whose purpose is to preserve the status quo pending the hearing and determination of the suit. In the premises therefore, I find that the Applicant has established a prima facie case that entitles this court to issue the interlocutory orders of injunction pending the hearing and determination of the suit. The Applicant also established that she will suffer irreparable loss that cannot be compensated by an award of damages if the suit properties are disposed of before the determination of the suit. Interlocutory injunction is granted in terms of Prayers 4, 6 and 8 of the pending the hearing and determination of the suit. The orders granted are as follows:
 - i. **A temporary injunction to issue restraining the defendant, his servants and or agents or otherwise howsoever from uprooting food crops, cutting down trees damaging, wasting, transferring, disposing, selling, alienating or otherwise whatsoever dealing in all that piece of property known as L.R. No. Githunguri/Gathangari [particulars withheld] and or nay or all improvements and developments thereon pending the hearing and determination of this suit.**
 - ii. **The plaintiff is allowed to pick green leaf tea from the half acre out of Githunguri/Gathangari [particulars withheld] pending the hearing and determination of this application.**
 - iii. **The plaintiff is allowed to order that the plaintiff is allowed to use and/or cultivate one acre out of the parcel of land known as Githunguri/Gathangari [particulars withheld] where the**

plaintiff's school was situated pending the hearing and determination of the suit.

13. Prayers 5 and 7 shall be dealt with at the hearing. Costs shall be in the cause.

Dated, signed and delivered this **26th** day of **February** 2015.

R.E. OUGO

JUDGE

In the presence of:-

.....For the Applicant

.....For the Respondent

.....Court Clerk