



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT KAKAMEGA**

**DIVORCE CAUSE NO: 5 OF 2008**

**P W.....PETITIONER**

**VERSUS**

**G M S.....RESPONDENT**

**RULING**

In her application dated 22/2/2011, the applicant is seeking an order of injunction against the respondent in relation to access to the parties' matrimonial home. The application is supported by the applicant's affidavit sworn on the same date. The respondent filed a replying affidavit sworn on 5<sup>th</sup> May 2011.

Counsels for both parties relied on their respective pleadings. The essence of the application is that there is a divorce cause pending. The applicant contends that before the divorce case is heard, the respondent got remarried and has threatened to throw her out of the matrimonial home. This made the applicant to cause the respondent to be charged with the offence of bigamy before the Butali court.

The applicant contends that the respondent is intending to throw her out of the matrimonial house which she co-owns. On his part the respondent avers that the applicant left the matrimonial home on her own volition and deserted the children.

This cause was filed in 2008. The parties have seven children. By 2008, the last born was 9 years old. It is not clear how the parties have been living since the filing of this cause. Whereas the respondent maintains that he is the one living with the children, the record shows that the applicant complained to the Kakamega Children's Office for the upkeep of the children. The parties are accusing each other of selling part of the matrimonial properties. The applicant is willing to reconcile with the respondent but its not clear whether the respondent is willing to accept that gesture. The marriage certificate shows that both parties are teachers.

Since the divorce cause is purely on the determination of the status of the marriage and not on distribution of the matrimonial property, I do find that it would be unfair to lock out one party to the marriage out of the matrimonial property. The issue as to how the property was acquired is not for this forum. The parties have lived together for over 25 years. I am satisfied that the applicant is entitled to access the matrimonial house. The application dated 22/2/2011 is granted as prayed. Costs shall be in the cause.

Dated, signed and Delivered at Kakamega this 27<sup>th</sup> day of February 2014.

**SAID J. CHITEMBWE**

**JUDGE**