

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CIVIL SUIT NO. 59 OF 2011

NANCY VALERIE KENDUIYWA.....PLAINTIFF

VERSUS

MAUREEN C. NYIGEL.....DEFENDANT

RULING

The subject matter of this ruling is the Motion dated 8th November 2011 in which **Maureen Nyigeli**, the Defendant herein, applied for this suit to be struck out on the basis that the same does not disclose a reasonable cause of action. It is also argued that the suit is vexatious and frivolous. The defendant swore an affidavit she filed in support of the Motion. The Motion was served upon **Nancy Valerie Kenduiywa**, the Plaintiff herein, but she did not deem it fit to respond to it. The Motion was fixed for interpartes hearing on 2nd April 2014. A hearing notice was served upon the firm of Nyaingiri & Co.Advocates for the Plaintiff but neither the Plaintiff nor her advocate turned up in court for the interpartes hearing of the Motion. This court permitted Mr. Koko, learned advocate for the defendant to prosecute the application *ex-parte* since it was unopposed. Mr. Koko simply relied on the grounds set out on the face of the Motion and the facts deponed in the supporting affidavit.

I have considered the oral submissions of the Defendant's learned counsel plus the material placed before me. In the Complaint, the Plaintiff seeks for judgment against the Defendant in the following terms:

- a. **A permanent order of injunction restraining the Defendant from entering, trespassing and/or alienating the Plaintiff's home.**
- b. **A permanent order of injunction restraining the Defendant from interfering with the Plaintiff's quiet occupation of her matrimonial home.**
- c. **Costs of this suit.**

It is said that the Complaint does not disclose the ownership of the property the Plaintiff seeks to restrain the Defendant from occupying or entering. This averment is not contested. I have also looked at the Complaint and it is true the property is not identified. The defendant also avers that the Plaintiff filed a near similar suit i.e Milimani H.C.C.C 289 of 2011 and has obtained orders similar to what she is now asking. The defendant has accused the Plaintiff of concealing from this court the existence of the aforesaid suit. For the above reason, the defendant has urged this court to hold that this suit is vexatious. The Plaintiff did not controvert this averment and I have no reason to disbelieve the Defendant.

In the end, I am convinced that the Motion dated 8th November 2011 is well founded. It is allowed as prayed.

Dated, signed and delivered in open court this 20th day of June, 2014.

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J.K.SERGON

JUDGE

In the presence of:

N/A for Plaintiff

Mr. Mutai holding brief for Mr. Koko for Defendant