



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**HCCC NO. 8 OF 2013**

**P W M.....PLAINTIFF**

**VERSUS**

**R N W.....DEFENDANT**

**RULING**

1. The Motion dated 20<sup>th</sup> July 2011 seeks injunctive orders to restrain eviction from a property known as Plot No. *[particulars withheld]* Matopeni, Kayole. It also seeks return of goods attached in distress for rent.
2. The Motion is an interlocutory application filed in the suit commenced on 20<sup>th</sup> July 2011 by way of Originating Summons dated 20<sup>th</sup> July 2011. It seeks declarations relating to the said property which the applicant is jointly owned between him and the 1<sup>st</sup> defendant. He alleges that the 1<sup>st</sup> defendant was his wife and that the property in question was matrimonial property jointly acquired by both of them.
3. He has attached to his affidavit a document to demonstrate that he paid dowry. There is a birth certificate to show that he has a child with the 1<sup>st</sup> defendant. There is also a bundle of receipts designed to evidence that he contributed to the development of the property. There are also documents to also evidence that he had electricity connected to the property.
4. The 1<sup>st</sup> defendant has replied to the application by her replying affidavit shown on 16<sup>th</sup> August 2011. She concedes that she was married to the plaintiff, although they had separated since 2010. She states that there are a pending divorce proceedings. She states that both she and the plaintiff were working, but she asserts that she acquired the suit property single-handedly. She denies having received any contribution from the plaintiff. She has attached documents to demonstrate that she was in employment at the time of the alleged acquisition of the property. There are also loan application forms attached to the affidavit. There is also a statement of accounts to show deductions from her salary of the loan advanced to her by her cooperative society. She has also attached receipts to show that she bought materials for the development of the property.
5. From this material there is established a *prima facie* case that the plaintiff has a case with same probability of success. There is some evidence that he was connected in some way with the said property. Whether this connected is by way of acquisition or development of the property or in the nature of tenant/ landlady relationship is a matter for trial at the main hearing.
6. There is basis for grant of prayer 1 of the application dated 20<sup>th</sup> July 2011. As regards prayer 2, I do note that the same is also sought in the Originating Summons, it is therefore a matter for determination at the main trial.
7. For avoidance of doubt, I do grant the Motion dated 20<sup>th</sup> July 2011 in terms of prayers 1 and 3 of the application. Costs shall be in the cause.

**DATED, SIGNED and DELIVERED at NAIROBI this 26<sup>th</sup> DAY OF September, 2014.**

**W. MUSYOKA**

**JUDGE**