



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Environmental & Land Case 675 of 2011

IN THE MATTER OF SECTION 17 OF THE MARRIED WOMEN'S ACT 1982

AND

IN THE MATTER OF SECTION 2 (1) OF THE JUDICATURE ACT CAP 8 OF THE THE LAWS
OF KENYA

AND

IN THE MATTER OF DIVISION OF MATRIMONIAL PROPERTY

BETWEEN

GHEBREKRISTOS ABRAHA ASSEFASH.....PLAINTIFF/APPLICANT

VERSUS

ZERAI TOWLDE GHEBREKRISTOS.....DEFENDANT/RESPONDENT

RULING

This is an amended Notice of Motion dated 14/09/2012 brought under *Order 40 Rules 1 & 2 of the Civil Procedure Rules, Section 1A and 1B of the Civil Procedure Act* and all other enabling provisions of Law for orders that: -

1. Temporary injunction be granted restraining the Defendant/Respondent and his servants, agents and on licensee from transferring, selling, alienating disposing or in any way interfering, dealing with all that parcel of land known as **L.R No. 209/9791/12** pending the hearing and determination of this suit.
2. Temporary injunction be granted restraining the Defendant/Respondent or his servants, agents and or licensee from transferring, selling, alienating, disposing, receiving and collecting rent from or in any way interfering or dealing with all that parcel of land known as land **Ref. No. 209/9791/12** pending the hearing and determination of this application or further order of the court.
3. An injunction order be granted compelling the Respondent herein whether by himself, agent, servant, tenant or anybody acting on his behalf to deposit all the rent collected from the Matrimonial Property known as **L.R. No. 209/9791** into a joint account to be opened in the names of both the Applicant and Respondent and their nominees pending the hearing and determination of this application or further orders of the court.

The Application is supported by the grounds on the face of the application and the affidavit of

Ghebrekristos Abraha Assefash.

The application came for hearing on 21/11/2012. There was a return of service filed in court which showed that the Defendant/Respondent herein was served. However he had not entered appearance nor opposed the application. The application was argued *ex parte* as it was unopposed.

I have considered the provisions of *Order 40 Rule 1 and 2 and grounds for the application*. The applicant stated that she stands to suffer irreparable loss if the orders sought are not granted.

That the suit property in question was acquired during the marriage between the Applicant and the Respondent.

That respondent has threatened to dispose off the joint property in total disregard of the applicant's interest.

As I stated earlier, the application is not opposed. Has the applicant herein demonstrated that she has met the threshold principles laid down in the case of *Geilla Vs. Cassman Brown E. A 1973* on the issuance of injunction?

The applicant states that she contributed to the purchase of the suit land and now the Respondent threatens to sell it disregarding her interest.

If the said property **L.R 209/9791** is sold, then the applicant stands to suffer loss as her interest may not be catered for.

I find that the instant application has merit and I will allow it in terms of prayer 2, 3 and 4 pending the hearing of the Notice of Motion.

Defendant will not suffer any prejudice whatsoever.

Costs in the cause.

Dated, signed and delivered this 16th day of January, 2013.

**L.N. GACHERU
JUDGE**

In the Presence of:

.....for the Applicant

.....for the Defendants

.....Court clerk