



**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**LAND AND ENVIRONMENT CASE NO. 89 OF 2013**

**J P B**

**(SUING AS THE ATTORNEY TO D F J D) ..... PLAINTIFF**

**-VERSUS-**

**ROY PATRICK DAVIS & 6 OTHERS ..... DEFENDANTS**

**RULING**

[1] The applicant filed this application on 13th May 2013. In the application he prayed for 8 prayers. During the hearing he prayed for prayers no. 2,6 and 7 only. He relied on the self explanatory affidavit of J P B.

Mr. Erendi Principal State Counsel appeared for 4th,5th,6th and 7th respondents. He did not oppose the application, however he had issues with prayer no. 7 which he opposed. Mr. Shimaka appeared for the 1st, 2nd, and 3rd respondents. He relied on the affidavit of Roy Patrick Davis entirely. The said affidavit is self explanatory. I have had the benefit of listening to all counsels herein. I have also read the affidavits sworn herein. The plaintiffs herein are alleged to have been man and wife at sometime. The land in question is alleged to have been their matrimonial home. This fact appears from the affidavit of the respondent.

The issue of who owns the suit properly cannot be determined at this interlocutory stage. Evidence must be heard on the same. The balance of convenience tilts in favor of the applicant. I grant her prayer no. 2 and 6 of the motion dated 13th May, 2013 pending the hearing of this suit. Each party shall bear their own costs.

**Dated and delivered in open Court this 26th day of July, 2013.**

**S.N.MUKUNYA**

**JUDGE**

**26.7.2013**

**M/s. Obara for the plaintiff absent**

**Mr. Ngeny for 1st,2nd,3rd defendants - absent**

**Eredi State Counsel - present for 4th,5th and 6th - defendants.**