



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**HCC NO. 104 OF 2012**

**FRIDA KENDI..... PLAINTIFF**

**VERSUS**

**LAWRENCE MAJAU.....1ST DEFENDANT**

**FESTUS KATHENDU.....2ND DEFENDANT**

**MUNICIPAL COUNCIL OF MERU.....3RD DEFENDANT**

**RULING**

The application herein is dated 20th September and is premised on the provision of the law mentioned on its face. It seeks Orders: 1, 2, 3, 4, 5 as in the Notice of Motion dated 21.9.2012. as follows:

1. **That in the 1st instance the court do certify matter urgent and dispense with service.**
2. **That court do issue an order of inhibition to stop the Defendants, their agents, servants or anybody acting on their behalf from transferring, alienating or whatsoever including(sic) not to collect rent of plots Madaraka Estate 62 and 45 Meru Municipality until suit herein is heard and determined or until further orders of the court.**
3. **That court do issue an order against the 2nd Respondent, his agents, servant or anybody claiming through him to restrain him from collecting rent, harassing tenants or whatsoever interfering with plaintiff(sic) collection of rent and management of plots Mandaraka estate No.62 and 45 until further orders of the court or until suit herein is heard and determined.**
4. **That court do make any other order for ends of justice.**
5. **That costs be provided for.**

It is supported by the following grounds:

(a) **The 1st Respondent has transferred fraudulently plots Mandaraka Estate 62 and 45 subjects herein to the 2nd Respondent in collusion with the 3rd Respondent despite court orders herein dated 31.05.2012 and served on 6.6.2012**

**(b) The 2nd respondent has threatened the tenants in the premises that he will evict them by next week if they failed to pay him rent.**

**(c) That the Applicant has been paying loan she took in developing the same and she pays Kshs.30,000/= per month from rent herein which amounts to Kshs.60,000 per month.**

**(d) The balance Kshs.30,000 is for the plaintiff's upkeep and the 2 children as 1st defendant abandoned them.**

**(e) If orders sought are not granted, the applicant and her 2 children will be rendered destitute.**

Interim orders were granted by the Hon. Justice J. A. Makau, J. on 21.9.2012. Prayers 2 and 3 were granted until the suit herein is heard and determined.

The parties, by consent, elected to put in written submissions. They were highlighted on 13.5.2013. When highlighting her submissions, the applicant re-stated that she was relying on her averments and submissions already filed in Court. She was also relying on the numerous authorities. It was submitted that she was entitled to the prayers she was seeking.

For the respondent, it was submitted that, he was relying on 4 affidavits and multiple documents showing the chronology of events leading to the acquisition of the properties. It was submitted that he had solely been responsible for the acquisition of the properties and that he was a responsible husband who had taken good care of the applicant and their children etc.

The averments of the parties constitute claims and counter claims, almost ad infinitum. But there are at least three facts which are not in dispute. These are:

1. The applicant is the estranged wife of the respondent.
2. The respondent is the estranged husband of the applicant.
3. The applicant is living with children who are issues of the marriage.

Having examined the averments and submissions very carefully, it is clear that many of the issues raised can only be fully ventilated during the hearing and determination of the suit itself. I do note that the advocates for the parties have very vigorously and ably presented the positions of their clients. They have given very good authorities. I, however, find that those authorities, more or less, deal with positions which shall be heard and determined in the main suit.

At this stage, I only need to consider the relative weight of the apposite propositions. It is necessary that the suit be heard as soon as possible. Interlocutory applications will only delay it further which will not be in the interest of the parties and their children. I will give this case a priority hearing date subject to my getting the

cooperation of the parties

I find that the applicant has satisfied me that she deserves the orders she has sought. The application is allowed. Costs will be in the cause.

**Dated, Signed and Delivered in Open Court at Meru this 12th day of July 2013 in the presence of:**

**E. G. Mwangi**

**Murithi h/b c. Kariuki for plaintiff/applicant**

**Gatare – Absent for 3rd defendants**

**P. M. NJORGE**

**JUDGE**