



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL SUIT NO.204 OF 2011(O.S.)**

**J.N.K.....APPLICANT/PLAINTIFF**

**VERSUS**

**S.N.M.....RESPONDENT/DEFENDANT**

**RULING**

Parties to this application are husband and wife, the applicant being the wife. Their marriage is in the process of dissolution through Nakuru C.M. Divorce Cause No.5 of 2011, **S.N.M V. J.N.K.** Pending that dissolution, the applicant has brought an originating summons under the **Married Women Property Act**, 1882 for a declaration that LR NO[...] was acquired and developed by the joint efforts and resources of the parties during the subsistence of their marriage.

In the meantime, the applicant by a motion has sought orders to restrain the respondent from interfering with, alienating, disposing of or in any manner whatsoever dealing with the property. The applicant contends that she made direct and indirect substantial contribution towards the construction of the property. For instance, she has averred that in 2005 and 2006 respectively, she obtained loans in the sum of Kshs.159,700/= and 70,000/= respectively which were appropriated towards the development of the property.

While the respondent does not dispute the applicant's contribution, he has deposed that the contribution was so negligible as to entitle the applicant to an order of injunction; that the loss the applicant stands to suffer can be compensated by an award of damages.

For the applicant to be granted restraining order of injunction, she must demonstrate that she has a *prima facie* case with a probability of success at the trial. An injunction will not normally issue unless the applicant stands to suffer irreparable loss. Should the court be in doubt, the dispute must be decided on the balance of convenience. See **Geilla Vs. Cassman Brown & Co. Ltd.** (1973) EA 358

No doubt there are divorce proceedings pending between the applicant and the respondent. The originating summons seeks a declaration that the property in question was jointly acquired and developed. The property is registered in the name of the respondent. Irrespective of the level of contribution by the applicant towards the development of the property it is a fact that is not denied that

she made some contribution. That gives her proprietary right over the property which right must be protected by preserving the property pending the determination of the originating summons. Being their matrimonial home, the fact that its value can be quantified cannot deny the applicant an equitable relief of injunction.

For the reasons stated, there will be an injunction pending the determination of this originating summons. The terms of the injunction sought in the application are too wide and may result in a mischief. They are modified to read that the respondent is restrained from “***alienating, disposing of, charging or wasting***” the property pending the hearing and determination of the suit herein.

Costs in the cause.

**Dated, Signed and Delivered this 29<sup>th</sup> day of February, 2012**

**W. OUKO**

**JUDGE**