



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL CASE NO. 304 OF 2011**

**JULIA WANJIKU MWANGI.....PLAINTIFF**  
**VERSUS**  
**JOHN MWANGI NJAGI.....DEFENDANT**

**RULING**

Julia Wanjiku Mwangi, the applicant herein, has filed the Notice of Motion dated 18/10/2011 in which she seeks an order of injunction to restrain John Mwangi Njagi (the defendant/respondent) his agents or agents from interfering, trespassing, selling or alienating land title number Shoka/Karunga Block 3/8, Shoka Karunga Block 3/17, Shoka/Karunga Block 3/18, Shoka/Karunga Block 3/19, Shoka/Karunga Block 3/20 and Shoka/Karunga Block 3/211 pending the hearing and determination of this suit.

The applicant and respondent are husband and wife, having married in 1966 under the Kikuyu Customary Law. They were blessed with 3 issues of the marriage and lived together till 1987 when the applicant said she was forced out of the matrimonial home; that they had acquired the pieces of land listed above; she has been waiting to see if the respondent's behavior would change in order to reconcile but in vain and she has now commenced divorce proceedings (JWK2), Divorce Cause No.[.....]; that the respondent has started selling the matrimonial property and vehicles; that he sold land to Evans Nyangaresi Sirimani (JWM3). On realising that the respondent was selling the land, she placed cautions on the land but despite the cautions, he is still selling the land; that he wants the caution removed to enable him sell. She said further that some of the property was charged to secure a loan taken by the respondent without informing her and that is why she brings this application. She recalled that they got married in Muranga, and moved to Gilgil on 4/7/1972; were accommodated by the respondent's relative, Kareri who allowed them to cultivate his land. In December 1973, Gakungu Kimani the respondent's uncle sold to them Shoka Co-operative shares at Kshs.300 while Kareri paid Kshs.500/-, the purchase price. That the respondent and applicant started a butchery business at Gilgil whereby she supplied him with the animals for slaughter and from the proceeds of the butchery, they bought the land in Gilgil between 1975 and 1978 and motor vehicles. She averred that the respondent has never bought anything else with the wives he later married; That she visited the respondent's house in 2009 but found nothing new. She further urged that even if the pieces of land were registered in the respondent's name in 1991, they had been bought between 1973 and 1978.

In his affidavit in reply, the respondent averred that it is the applicant who deserted the matrimonial home in 1985, and that all the pieces of land were purchased by him and his 3<sup>rd</sup> wife and that he bought the land from different people at different times; that vehicles mentioned by the applicant were bought and sold by him in the 1980s and 1990s. He admits to have sold Gilgil Karunga Block 3/8 (Shoka) to meet the educational needs of his children. The respondent further said that the applicant left him with all their children, chased away his 2<sup>nd</sup> wife who left him with 2 children and that his third wife and him have brought up all their 9 children; that he is now 65 years old, ailing and needs to use his property for medical expenses; that Block 3/17 is charged to AFC for Kshs.200,000/-. It is the respondent's contention that the applicant has not demonstrated that she has a prima facie case with a probability of success.

The only issue in this application is whether the plaintiff meets the conditions for the grant of an interlocutory injunctive relief.

The first ground to consider is what the facts a prima facie case with a probability of success. The respondent does not deny having been married to the applicant. The marriage has not been dissolved. The applicant has now filed Divorce Cause 43/2011. So far the plots, the subject of the proceedings, are registered in the name of the defendant (see exhibits of the title documents). There is no evidence to show that the properties were bought jointly by both the plaintiff and respondent. However, they were acquired during the subsistence of the marriage. The respondent admits that he needs to sell the properties to enable him meet his medical bills. If the court does not grant the order of injunction, then the respondent will put them beyond the reach of the applicant in the event that she succeeds.

Under **Article 45(3)** of the Constitution, parties to a marriage are entitled to equal rights at the time of the marriage, during and at the dissolution of the marriage. If indeed the applicant and respondent were man and wife at the time the properties were acquired, then the same need to be preserved so that the court can determine the rights of each at the hearing. I do find, prima facie, the applicant has demonstrated that she has an arguable case and an order of injunction should issue. For that reason I do hereby grant the injunction that the respondent should not transfer, sell or alienate the suit land or deal with it in any adverse manner adverse to the applicant's rights and interest, pending the hearing of this suit. Costs to abide the suit.

**DATED and DELIVERED this 20<sup>th</sup> day of March, 2012.**

**R.P.V. WENDOHO**  
**JUDGE**

**PRESENT:**

N/A for the plaintiff

Mr. Maragia holding brief for Mr. Mutonyi for the defendant

Kennedy – Court Clerk