



REPUBLIC OF KENYA

IN THE HIGH COURT

AT EMBU

Civil Case 16 of 2011

SILVESTER NJERU MUCHIRAPLAINTIFF

VERSUS

AGATA WAMBUI NJERU..... DEFENDANT

R U L I N G

This is the chamber summons dated 22/2/2011 brought under Order 40 rules 1 & 2 Civil Procedure Rules. The Plaintiff/Applicant seeks a restraining order against the Respondent and others to stop them from selling, transferring, charging, alienating, leasing or in any other way dealing with **PLOT NO.4 UGWERI** pending the hearing and determination of this suit. It's supported by the grounds in the body of the application and the affidavit of the Applicant sworn on 22/2/2011. In it he states that the Respondent is his wife since 1980. They have 5 children. And in November 2010 the Respondent walked out of the matrimonial home. They had a matrimonial property known as Plot No. 4 Ugweri which was registered in the Respondent's name. He has learnt that the Respondent is in the process of disposing of it to a 3rd party yet this is the only family property. Hence the application.

The Respondent has in her replying affidavit denied all the Applicant's application. She says it's her who bought the property and she opposes the application. She further says the Applicant chased her away from the matrimonial home, and has married another wife.

Both M/s Njeru for Applicant and the Respondent orally submitted.

I have carefully considered the affidavits, annexures and the submissions made. There is no dispute that this is property that was bought during the subsistence of the marriage of the parties herein. About who bought it or who did not buy it is a matter of evidence which the court will not deal with now.

Since it's also clear that the parties are not living together now, it would be just to preserve this property as the couple sorts itself out.

It's however not clear who between the two is benefiting from the income from this building and plot. Are the children also benefiting? To ensure that the property is not disposed off without mutual agreement I do find that this is a matter that passes the test of **GIELLA –VS- CASSMAN BROWN LTD**

[1973] EA.

I will allow prayer 2 of the chamber summons dated 22/2/2011. The same order applies to the Applicant.

The parties to hasten the hearing of the main application/ originating summons.

Costs in the cause.

DATED, SIGNED AND DELIVERED AT EMBU THIS 6TH DAY OF JUNE 2012.

H.I. ONG'UDI

JUDGE

In the presence of;

Mr. Mugambi for M/s Njeru for Applicant/Plaintiff

Respondent/Defendant – present

C/c - Njue