



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

CIVIL CASE NO. 1 OF 2010

SALOME WAITHERA NJAU PLAINTIFF

VERSUS

JAMES NJAU MBUGUA DEFENDANT

RULING

Coram : Mwera J
Muchiri for Kagucia for plaintiff/respondent
Maina N/A for defendant
Ms Momanyi applicant/interested party
Njoroge Court Clerk

Invoking the powers donated by Order 1 rr. 10(21, 22 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act the interested party/applicant filed a chamber summons with prayers:

- i) that she be joined in these proceedings as an interested party; and
- ii) that she should be so reflected in future proceedings.

The grounds set out in the application were to the effect that she was the wife of the defendant and the pleadings had so referred to her. And she had great interest in the suit property herein.

In the supporting affidavit it was stated that the plaintiff and the defendant cohabited between 1977 and 1985 without marrying. Then the plaintiff left for an unknown destination. On 23/4/88 the defendant married the applicant under the Marriage Act as per the marriage certificate exhibited. As the defendant's legal wife, the two moved to live on plot LR No. DAGORETTI/MUTUINI/967, registered in the name of the defendant (... JGN 2) between 2000 and 2009. They built a residential house and others for rental on the plot, without the plaintiff's contribution. Then in 2008 one of the sons of the plaintiff died and she resurfaced. On this account the defendant gave one third of their plot to the plaintiff with her children to build on and she was allowed to occupy one of the rental houses as she completed her own house on the said allotted portion. The applicant and the defendant moved from the premises to elsewhere, intending to let out their residential house. The plaintiff requested and the couple granted her occupation of the said residential house awaiting completion of her house. The plaintiff neglected to pay power bills and stopped the construction of her house. Told to vacate the residential house, the plaintiff lodged a caution on the property. She then got an injunction excluding the defendant and by that, the applicant from the property On reading Nambuye J decision of 28/5/10 she injucted the defendant from disposing off the suit plot. The plaintiff was otherwise a licensee with no proprietary interest in the plot. Her moves therefore are seen to militate against the rights and interest of the applicant in the subject

property and so she ought to be joined in these proceedings on that account.

The plaintiff filed a replying affidavit terming the application under review vexatious and worth only being struck out. It was contended that the suit being between the plaintiff and her estranged husband had nothing to do with the applicant, and she had pleaded matters not known to the plaintiff. The fact was that the defendant used proceeds from the sale of their matrimonial home at Njoro to build houses on the suit premises. So she resides on it as of right and the orders of injunction granted were deserved.

The applicant responded in a lengthy supplementary affidavit that she was legally married and all that the plaintiff had said about her was with no basis. They first lived on the subject property with the defendant and she contributed to the building of houses thereon. There was nothing by way of affidavit on the file by the defendant in support or otherwise of the applicant's or the plaintiff's position.

In submissions each side reiterated more or less what had been deponed to in the affidavits.

In this court's view the position to take is that it is not being asked to determine whether the plaintiff, a customary law wife of the defendant or the applicant, the legal wife has these or those rights on the subject plot, superior to the others. That is better left to the defendant who has as at this time chosen to keep a studious silence in the distance. However, from what the applicant, the legal wife of the defendant has put forth, she has demonstrated by the material and deposition that she lived with the defendant on the suit premises since their marriage and contributed to building the house there until 2008 when the plaintiff showed up to bury her son on this land. That place could pass as a matrimonial home for the applicant. The plaintiff only came to reside there after the death of her son in 2008. If the plaintiff is obtaining orders against the defendant one can right away see that they will affect the applicant, who has demonstrated that she is sufficiently interested in the suit property and the proceedings involving it.

Accordingly, this court grants her the orders sought.

Ruling delivered on 17.2.11.

J. W. MWERA
JUDGE