



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

ELC NO.298 OF 2010

SOLOMON MANAMBOPLAINTIFF

VERSUS

JANET N.S. MANAMBO.....DEFENDANT

RULING

The dispute in this case involves a parcel of land title No. Nairobi/Block 110/539 Thome Estate, Nairobi. The parties herein are husband and wife although there is a divorce petition filed by the respondent herein seeking dissolution of their marriage. In this case, the plaintiff/applicant has sued the defendant/respondent claiming among other things that there be a declaration that the defendant holds the matrimonial home on the suit property for her own self and in trust for the plaintiff. The plaintiff also asks the court to determine the shares of both parties in regard to their respective contributions towards the purchase and the construction of the matrimonial home.

There is also a prayer that the said suit property be registered in the joint names of the parties herein as tenants in common, with each party holding shares as determined by this court and finally that, each party be at liberty to buy out the other party's share in the suit property and in default, the property be sold and proceeds shared between the parties according to their respective shares.

It is the plaintiff's case that he agreed with the defendant that, the plaintiff would purchase the suit property and that they would occupy the same as their matrimonial home. The plaintiff, who was then undertaking official duties in the former Yugoslavia, remitted the purchase price for the property to the defendant and the property was subsequently transferred and registered in the names of the defendant. It is his case that the defendant at all material times knew that the property was registered in her name as a matter of convenience, as the plaintiff was out of the country and she was to hold the same in trust for the plaintiff.

A matrimonial home was constructed and the parties moved there into sometimes in the year 2004 until the month of May 2010, when the defendant left the matrimonial home taking away an assortment of household goods and appliances to an undisclosed location, and has since threatened to evict the plaintiff from the said home. It is his case that, he expended huge sums of money and resources in purchasing and building the matrimonial home and stands to suffer irreparable loss and damage if he is evicted as he contributed over 95% in the purchase and construction of the matrimonial home.

Alongside the plaint, the plaintiff filed an application by way of Chamber Summons seeking interim injunction orders under Order XXXIX Rules 1, 2 and 3 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act in line with the main prayers set out in the plaint. On 18th June, 2010 this court granted interim *ex-parte* orders pending the hearing of the application *inter-partes* and these orders have been extended from time to time.

Upon service of the application, the defendant/respondent filed a replying affidavit in which she denies the allegations raised by the plaintiff in the plaint and opposes any injunction orders in favour of the plaintiff on the basic ground that the property is registered in her name and she bought it using her own money and that the plaintiff did not contribute any money whatsoever.

The plaintiff has no legitimate claim over her property apart from television sets and music systems and did not in any way purchase the property in the matrimonial home, and if the orders were to be granted as sought by the plaintiff, they will amount to un-just enrichment to him, whereas he has not spent a shilling on any properties he claims to be his own.

Both parties have annexed several documents to support their respective positions and the learned counsel appearing for the parties have filed submissions which I have noted. They have also cited several authorities which I have read.

For the plaintiff/applicant to succeed at this stage, he must establish that he has a *prima facie* case with a probability of success. He is also required to show that if the orders are not granted, he is likely to suffer irreparable loss that may not be adequately compensated by an award of damages and if the court is in doubt, it shall decide the matter on a balance of convenience.

It is conceded by the plaintiff that, the property is registered in the name of the defendant. He has however explained the circumstances under which the said registration was effected in the name of the defendant.

I have seen several annexures to the supporting affidavit to show that the plaintiff took several loans from financial institutions some of which are, the Standard Chartered Bank, Barclays Bank, Co-operative Bank of Kenya Limited and Harambee Sacco Society Limited. There are also several annexures showing particulars of internal fittings which have been annexed to the said affidavit.

On the other hand, the defendant/respondent has also annexed several documents to show that she also sought financial facility from her employer and in particular United Nations Sacco Society Limited and also a Certificate of Search to confirm that the property was registered in her name.

It has not been denied by the defendant that the suit property herein has been their matrimonial home until her alleged departure in May 2010. Whether or not the parties purchased the property singularly or by way of joint contributions is a matter for the trial court. What the plaintiff has shown as at this stage is that, he secured finances from his employer and several financial institutions to finance the purchase and development of the property. That in itself shows a *prima facie* case with a probability of success.

That being the case, I believe he has justified the granting of the orders sought pending the hearing and final determination of this case. Accordingly, the application brought by was of Chamber Summons dated 18th June, 2010 is allowed in terms of prayers No. 2, 3, 4 and 5 of the said application. The costs shall be in the cause.

Orders accordingly.

Dated, signed and delivered at Nairobi this 2nd day of February, 2011.

A. MBOGHOLI MSAGHA
JUDGE