



CIVIL PRACTICE AND PROCEDURE

- **An injunction ought to be issued to preserve property which is the subject of a dispute.**

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

HIGH COURT CIVIL CASE NO. 146 OF 2010 (OS)

VERONICA WANDIA WAMBUGU.....

PLAINTIFF

VERSUS

STEPHEN MAITETHIA

KIRIMI.....DEFENDANT

RULING

The plaintiff Veronica Wandia Wambugu has filed this action seeking determination that she and Stephen Maitethia Kirimi the defendant are husband and wife. She also seeks determination that they hold in equal shares parcel no. *Ntima/Ntakira/3795*, and motor vehicle registration number KBD 837L. She also seeks a determination that she contributed wholly or in part to the acquisition of parcel number *Ntima/Ntakira/395* and motor vehicle KBD 837L. There are two applications for determination in this ruling that were argued together. The application dated 16th November 2010 was partially considered by a ruling dated 19th November 2010. By that ruling, the plaintiff and the children of the union between the plaintiff and the defendant were restored back to the family home situated at *Ntima/Ntakira/3795*. The only prayer needing my determination in that application is the prayer for injunction to stop the defendant from selling or transferring parcel number *Ntima/Ntakira/3795* and motor vehicle registration number KBD 837L until the final determination of this suit, and the prayer for an order of inhibition to issue over parcel number *Ntima/Ntakira/3795* until final determination of this suit. The Chamber Summons dated 8th December 2010 filed by the plaintiff seeks an order to restrain the defendant, his security guards or servants from stopping the plaintiff's house help, shamba workers, relatives and friends from entering the family home. I will deal with the latter application first. The order made in the ruling of this court of 19th November 2010 restored the plaintiff and the children of the union to the family home. The defendant is not presently residing in that home. He has however stated in his replying affidavit that he has agricultural activities on that land. He further deposed in his replying affidavit that there is pending before court a criminal case which relates to the plaintiff's activities in the family home. Bearing those depositions in

mind, those cannot be the basis of stopping the plaintiff's friends, relatives or workers to access the family home. The Constitution of Kenya 2010 by Article 28 provides that every person has an inherent dignity and right to have their dignity respected and protected. The acts of the defendant to employ a guard to stop all persons except the plaintiff and the children from entering the family home is to treat the plaintiff and the children with indignity. Those actions by the defendant are in my view actuated by malice and cannot be condoned by this court. In respect of the application dated 16th November 2010, it should be considered in the background that the plaintiff has brought an action seeking determination of her rights over the suit property and the motor vehicle. In the light of that, and in order to preserve the property and the motor vehicle to ensure that they are available to the court as a court makes its final determination in this case, the orders of inhibition and injunction are in my view necessary. The defendant at the hearing will have ample opportunity to address the court on how the property and the motor vehicle were acquired. In the final determination of this case if the plaintiff is declared to be the wife of the defendant she would be entitled to the rights provided under Article 45 (3) of the Constitution. Those rights would entitle her to equal right to the property and the motor vehicle. I find that both applications filed by the plaintiff are merited and I grant the following orders:-

- 1. An order of injunction is hereby issued until final determination of this suit restraining the defendant from selling or transferring parcel number Ntima/Ntakira/3795 and motor vehicle registration number KBD 837L.***
- 2. An order of inhibition is issued until final determination of this suit is issued over parcel number Ntima/Ntakira/3795.***
- 3. An order is hereby issued restraining the defendant, his servants or agents until final determination of this suit from impeding the entry of the plaintiff's visitors, friends, relatives and workers from entering parcel number Ntima/Ntakira/3795.***
- 4. The plaintiff is awarded costs of the Chamber Summons dated 16th November 2010 and 8th December 2010.***

Dated, signed and delivered at Meru this 13th day of April 2011.

**MARY KASANGO
JUDGE**