



CIVIL PRACTICE AND PROCEDURE

- **Stay of execution.**
- **The constitution recognizes equal rights in marriage.**

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

HIGH COURT CIVIL APPEAL NO. 12 OF 2011

STEPHEN NTORIBI1ST APPELLANT
STANLEY GACHUI2ND APPELLANT

VERSUS

NAOMI KAINDA STANLEY.....RESPONDENT

RULING

The appellants Stephen Ntoribi (Stephen) and Stanely Gachui (Stanely) have filed this appeal against the ruling in CMCC Meru No. 582 of 2010 delivered on 13th January 2011. The appellants did not file a copy of that ruling or its extracted order but states in their application by Notice of Motion dated 20th January 2011 that the Chief Magistrate court in that ruling issued orders of injunction which according to the appellants were tantamount to the orders of eviction from parcel number 1423 *Kithurine Adjudication Section (the suit property)*. That Notice of Motion seeks the stay of execution of the order in the ruling of the chief magistrate's court. Stephen stated in his affidavit in support of the application that he purchased from the 2nd appellant the suit property and he is an innocent purchaser for value. He further deponed that he is in possession of that land. The respondent Naomi Kainda Stanley did not file a replying affidavit but from the documents annexed to the appellant's application, it is clear that she is the wife of Stanely. The claim in the chief magistrate's court Naomi alleged that Stanley secretly and without her consent attempted to sell the suit property to Stephen. The lower court granted injunctive orders against both appellants as stated above in this ruling. As I make this ruling, I am cautious not to overstep my mandate since the appeal itself is not before me. However, by the provisions of the Constitution of Kenya 2010 under Article 45 (3) is the principle of equal rights in a marriage is recognized. That Article provides as follows:-

“45 (3) Parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage.”

Whether or not the article extends to this case before the chief magistrate court, we have to await the final determination by that court. However, the Article quoted above shows sufficient reason why this court should decline to grant the stay that is sought. As said before, the appellants did not provide this court with an extracted order for which they seek stay. I therefore do not know the exact terms of the ruling in the chief magistrate’s court. Had I known, I might have modified the order where necessary. However as stated under the Constitution, Naomi has a right to challenge dealings with land owned by her husband the 2nd appellant. It is for those reasons that the notice of Motion dated 20th January 2011 is dismissed with costs to the respondents in this appeal.

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

**MARY KASANGO
JUDGE**