



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ELC. NO. 30 OF 2011

ESTHER WANJIKU KANG'ETHEPLAINTIFF

V E R S U S

CHRISTOPHER KANG'ETHE KIGWEDEFENDANT

R U L I N G

The Plaintiff alleges she is the wife of the Defendant, the two having been married under Kikuyu customary law since 1990, and that they have five children as follows:-

- a) C.N.K 19 years,
- b) C.K.K 17 years,
- c) L.W.K 13 years,
- d) A.W.K 9 years, and
- e) Y.M.K 7 years.

She claims that the two jointly own L.R. 10823/5 measuring about 380.68 Hectares which is registered in the name of a holding company called Kigwe Limited. The land was allegedly part of a bigger land which belonged to the deceased father of the Defendant. In later years, the deceased's land was distributed to his heirs leaving the present one for the Defendant. The Plaintiff's case is that the Defendant holds it in trust for her. The land was initially 1,244 acres, she says, but the Defendant has sold parts of it and squandered the proceeds. What is left is 300 acres. She says that he recently sold another portion of it and that the proceeds are held by his advocates M/S Walker Kontos Advocates. She claims 50% of the proceeds. The suit was filed to restrain the Defendant and those acting under him from receiving or appropriating 50% of the proceeds held by the stakeholders, for an order compelling the Defendant to file a true and joint account of proceeds of sale held by the advocates and an order that 50% of the proceeds be declared to belong to the Plaintiff.

Along with the suit was filed an application by way of motion of a temporary injunction restraining the Defendant, his agents servants, and/or employees from receiving and/or appropriating 50% of the proceeds of the sale of the land and held by the advocates pending the hearing and determination of this suit. Also sought were orders for accounts and that 50% of the proceeds be released to the Plaintiff.

The Defendant has opposed the application on various grounds. He has denied that the Plaintiff is his wife under customary law, or at all. He denies he has had children with her. He states that the land in question is registered in the name of Kigwe Limited which is a limited liability company in which the Plaintiff is neither a shareholder nor a director. Neither is he a shareholder nor a director in the company. She cannot therefore sue on the property, now that the company is not even a party to the

suit. There were other grounds.

I have considered the affidavits and annexures by parties to the application. I have also considered the written submissions by M/s Nyambura for the Plaintiff and Mr. Karungo for the Defendant.

It is admitted the land subject of the suit and application is registered in the name of a limited liability company. The Defendant is not a shareholder or director of the company. Even if he was, such company is a separate legal entity and its shareholder or director cannot be sued for its wrongs. Proceeds of any sale of land belonging to the company would *prima facie* be the property of the company. The result would be that, at this stage of the case, the Plaintiff has not demonstrated a *prima facie* case in terms of **Giella –Vs- Cassman Brown & Co. Ltd [1973] EA 358**.

Secondly, the sale must have been for a known value of land. The Plaintiff claims 50% of that. It is not indicated how much 50% represents. Either way, the Plaintiff has not shown that she will suffer irreparable injury or loss if the injunction is not granted. She did not demonstrate that if the money is appropriated or released to the Defendant he cannot refund it if called upon.

Prayers 4 and 6 amount to mandatory injunction. Such an injunction can only be granted at this stage in exceptional circumstances where the case is strong and straightforward (**Showind Industries Limited –Vs -Guardian Bank Ltd And Another [2002] IEA.284**). The relief being sought in the application would mean almost a final adjudication of the issues. I do not find an occasion has arisen for such relief to be granted.

I dismiss the application with costs.

DATED AND DELIVERED AT NAIROBI

THIS 31ST DAY OF MAY 2011

A. O. MUCHELULE

JUDGE