



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Suit 57 of 2009**

RONALD SCHAICH.....PLAINTIFF

VERSUS

MARY WAMBUI KARLEN.....DEFENDANT

**RULING**

There is pending suit between the parties herein. In the plaint dated 9<sup>th</sup> and filed on 17<sup>th</sup> February, 2009 the plaintiff seeks an order that the defendant's name be permanently removed, struck out and erased from the title document and or grant known as LR.No.11821 situate at Lower Kabete, Nairobi, and the plaintiff be declared as the sole owner thereto and the defendant be permanently restrained from laying any claim of ownership or at all.

The defendant has filed a defence to suit denying all allegations raised in the plaint and settles with a claim that she is the co-owner of the suit property.

There is now before me an application by way of Notice of Motion under Order L Rule I and 3 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act for an order that the plaintiff/ respondent do render accounts of the rent so far received, and the respondent be ordered to remit half of the rent received to the applicant. Further, that an order be issued that all future rent be paid into the court and in the alternative the tenant be paying each of the parties herein half of the payable rent.

The reasons for this application are;

- a) **That the suit property herein is jointly owned by the applicant and the respondent.**
- b) **The respondent has been enjoying rent proceeds alone despite the property being acquired jointly.**
- c) **It is only fair and just that the rent proceeds be shared equally and account be taken for the rent so far and an account be taken for the rent so far received.**
- d) **The applicant and the respondent are no longer in good terms.**

The applicant has filed an affidavit in support of the said application and in opposition thereto the respondent filed a replying affidavit and a further affidavit.

Both counsel have filed submissions in respect of this application. My first observation is that, in the defence filed by the applicant herein dated 27<sup>th</sup> March, 2009 there is no counter-claim raised that includes the prayers that are being sought by the defendant/applicant in this application. The second observation is that the defendant/applicant has specifically pleaded that this court lacks jurisdiction to entertain this suit or at all. Those two observations defeat the defendant's application which is before me for the orders prayed.

I note that the title document has both names of the parties herein as joint tenants, but going by the material so far disclosed in the pleadings that is a very serious triable issue. To grant the orders sought by the defendant/applicant at this stage would be in effect determining a triable issue that goes to the root of the dispute and this may prejudice the positions of the parties herein.

I note that the pleadings are closed and it is upon the parties to address the issues for determination under Order X of the Civil Procedure Rules so that the case can be listed for hearing and determined on merit.

On my part, I find that the application before me is premature and lacks foundation. The same is hereby dismissed with costs to the plaintiff/respondent.

Orders accordingly.

*Dated, signed and delivered at Nairobi this 29<sup>th</sup> day of September, 2010.*

**A. MBOGHOLI MSAGHA**  
**JUDGE**