



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA**

AT NAIROBI

MILIMANI LAW COURTS

Civil Suit 30 of 2009

IRENE WANJIRU GICHINGA..... PLAINTIFF

V E R S U S

JAMES NJOROGE GICHINGA..... DEFENDANT

R U L I N G

This is a Chamber Summons dated 31st July, 2009 filed by M/s Mwenda Kinyua & Company advocates for the applicant named as **IRENE WANJIRU GICHINGA**. It seeks 6 orders, two of which have been spent as follows-

1. (spent).
2. (spent).
3. *A temporary injunction do issue restraining the*

Respondent, his servants and/or agents from wasting, damaging or alienation, selling and or interfering with the property L.R. No. 209/15270 pending the hearing and determination of the originating summons.

4. *Leave be granted for service of the Originating*

Summons out of jurisdiction.

5. *Service of the Originating Summons be by*

Advertisement in a daily newspaper of wide circulation in Kenya and United States of America, or as the court may direct.

6. *Costs of this application be borne by the respondent.*

There are grounds on the face of the Chamber Summons. The application is also supported by an affidavit sworn by the applicant on 31st July, 2009. It is evident from the affidavit that the applicant herself is a resident of the United States of America, that is 7 Dickerson Lane Old Bridge New Jersey 0885745.

Having considered the application, documents filed, the applicant, I will not grant the restraining and injunctive orders sought. Though the applicant claims that the property is matrimonial property, no description or explanation has been given in the documents filed to show or demonstrate how it became matrimonial property. There appears to be only an allegation that the property is matrimonial property. The documents filed in fact indicate that the subject property is in the name of a company called **SOLEDO DEVELOPMENT COMPANY LIMITED**. No explanation as to the ownership or shareholding of the Company has been given. In my view, the applicant has not satisfied the first requirement under the case of ***GEILLA –VS- CASSMAN BROWN [1973] E.A. 358*** – has not demonstrated a prima facie case. On that ground I will not grant prayer 3.

On the prayers for substituted service, in my view a separate application has to be made based on the provisions for substituted service abroad. And that application has to be made in the Divorce Cause that has already been filed. The applicant is therefore at liberty to make a fresh application for substituted service as deemed necessary.

Consequently, and for the above reasons, I dismiss the application. The applicant will bear her own costs of the application.

Dated and delivered at Nairobi this 26th day November, 2009.

George Dulu

Judge.