

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

Misc. Civ. Appli. 82 of 2007

ROSA WANJIKUAPPLICANT

versus

ANNE WANJUGU NJUGUNA 1ST RESPONDENT

ARTHUR NJUGUNA KAMAU 2ND RESPONDENT

DAVID WAWERU KAMAU 3RD RESPONDENT

PATRICK KAHURA 4TH RESPONDENT

CAROLINE WANGARI5THRESPONDENT

RULING

ROSA WANJIKU WAWERU who is the applicant herein seeks an order to restrain **ANNE WANJUGU NJUGUNA, ARTHUR NJUGUNA KAMAU, DAVID WAWERU KAMAU, PATRICK KAHURA** and **CAROLINE WANGARI** who I shall refer to as the 1st to the 5th respondents respectively, from interfering with her matrimonial home. She also prays for an order to compel **DAVID WAWERU KAMAU**, who she claims is her husband, to allow her, peace of mind.

It is clear from the proceedings that the 1st, 2nd, 4th and 5th respondents, who are all related, are also the applicant's in laws.

It would appear that the applicant and the 3rd respondent had marital problems which led to a dissolution of their marriage in November 1985, and though the applicant denies that fact, the 3rd Respondent was however able to prove it by attaching a copy of the relevant court order to his replying affidavit. She has however remained in the matrimonial home, and this stay is in my view is the cause for the alleged problems for though she lives on the same parcel of land with all the respondents and though in different homesteads, she is of the view that her said husband is easily influenced by his co-respondents who are all his relatives and which interference has resulted in their denying her peaceful enjoyment of her home by interfering with her activities therein.

I have considered the pleadings herein as well as the submissions by the applicant and the respondents' counsel.

While I appreciate the fact that one is entitled to quiet and peaceful enjoyment of their property, I however need not reiterate the fact that an interlocutory application can only lie where a suit exists, yet it is clear that the applicant commenced her 'cause' by way of a Notice of Motion, which in my view is clearly contrary to the legal requirement that such an application cannot be the basis of a claim, for suit for any claim must be commenced by of a Plaint or where the rule so provide, by way of an Originating Summons, applications being for interlocutory matters. (**Adala v. Anyere CA No Nai 30 of 1988**).

In the circumstances, it is my humble opinion that this application, which is not based on a suit, cannot lie

in its current nature and I do strike it out. However, I have taken note of the relationship of these parties and I feel that it would only be fair if each party bears it's own costs.

Dated and delivered at Nairobi this 26th day of June 2008

JEANNE GACHECHE

Judge

Delivered in the presence of: