

REPUBLIC OF KENYA
IN THE HIGH HIGH COURT
AT ELDORET
CIVIL CASE 38 OF 2005 (OS)

JUDITH WAHU GACHURIA:.....PETITIONER

VERSUS

GEORGE GACHORIA MUHONGI:.....RESPONDENT

R U L I N G

The applicant filed this originating summons under Section 17 of the married women's property Act seeking division of matrimonial property they acquired with the respondent during the subsistence of their marriage. The originating summons is supported by an affidavit. On 3rd May 2005 he filed a Notice of Motion seeking for an order for preservation of the properties until the originating summons is heard and determined. In the Notice of Motion she tabulated the properties she wanted preserved. It is that notice of motion she is now seeking leave of the court to amend. She deponed and it was submitted that in that motion she omitted to include parcel **No. BUNGOMA/KIMININI/933** which has already been transferred to a 3rd party and subdivided into several portions in the list of properties. This parcel initially was registered in the name of the respondent and as such she want it included as one of the properties to be preserved.

The application was opposed by Mr. Gicheru who said the said portion is registered in the name of a 3rd party who is not a party to this suit.

I have carefully considered the application the affidavits and submissions. It is not in dispute that the parcel of land in question belongs to a 3rd party. It has been sub-divided and even one portion transferred to another person. These people are not parties to this suit. They are the current registered owners and since orders made may affect their proprietary rights the court find that it would be unjust to do so in their absence. It may be true that at one time the land was registered in the names of the respondent but as of now it is not. Infact even by the time the suit was filed it was not in the respondents name. Search certificate annexed show that it was registered in the names of **MONICA WARUGURU GACHUKIA** on 8th October,1998. Those were many years before this suit was filed. It was subdivided in December 2002 almost three years before the suit was filed. One cannot therefore say it was transferred with an intention of defeating this suit.

The upshot of the above is that I find no merit in the application and the same is dismissed with costs.

Dated and Delivered at Eldoret this 12th day of June,2007

KABURU BAUNI

JUDGE.