



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

Civil Case 296 of 2005

SALOME WAMBUI WAMBUUPLAINTIFF

VERSUS

GEORGE WAMBUU WAINAINA DEFENDANT

RULING

Salome Wambui Wainaina, the plaintiff/applicant filed an originating summons under the provisions of **Section 17 of the Married Woman's Property Act of England [1882]** against **George Wambuu Wainaina**, the respondent. She is seeking for a declaration that the properties stipulated under paragraph 1 of the said suit and the benefits arising out of the joint membership of Africa Club which were acquired by joint efforts and funds of both parties during the subsistence of their marriage be jointly owed between the applicant and the respondent.

Simultaneously with the filing of this suit, the applicant also filed on application by way of chamber summons dated 8th December 2005. The applicant has sought in that application for orders of injunction against the respondent restraining him from disposing, interfering or dealing with the properties listed thereunder until the determination of the suit.

The application was filed under certificate of urgency and was duly certified as urgent and interim *ex parte* orders were granted pending the *inter partes* hearing.

During the hearing of this application Counsel for the applicant submitted that both the applicant and respondent are married and they have been so married since 12th August 1989.

During the subsistence of their marriage they acquired and developed several properties to wit:

- i) *CIS Mara/IL Mashariani Morijo/243/244/245/246 /247*
- ii) *Olopito Group Ranch No.184*
- iii) *CIS-Mara/Oleleshwa/2044*
- iv) *CIS-Mara Enabelibeli/Enenetia/517*
- v) *CIS-Mara/Mashariani Morijo/1015*
- vi) *CIS-Mara/Oloroito/47*

- vii) *CIS-Mara Oleleshwa/278*
- viii) *Mavoko Municipality Block 30/163, 30/164, 30/165*
- ix) *IL Mashirini Group Ranch 3 plots*
- x) *Motor vehicle Nissan KAE 601C*
- xi) *Motor Vehicle Station Wagon KPR 530*
- xii) *Motor Vehicle Toyota G. Touring KAR 383R*
- xiii) *Benefits arising out of the joint membership of Africa Club.*

However, the marriage started experiencing problems and the applicant filed a Divorce Cause number 70 of 2005 at the Milimani Commercial Courts. The parties are also separated from each other as from 13th March 2005. The applicant contends that she contributed to the acquisition and developments of the above properties which were all acquired during the subsistence of the marriage.

All the above properties are in the sole name of the respondent and the applicant is apprehensive that unless the respondent is restrained by an order of this court, the respondent will sell the properties and thereby dispossess the applicant of her right full share.

So far the applicant stated that the respondent has disposed of one property namely; **CIS-MARA/OLELESHWA/278**. Counsel for the applicant relied on the Court of Appeal decisions in the case of **Nderitu Vs Nderitu [1995-1998] E.A.L.R. 235**, in which decision the Court of Appeal endorse an earlier decision in the case of **Kivuitu –Vs- Kivuitu [1985] LLR 1411** it was held that a contribution by a wife to properties acquired during coverture is both direct and indirect. The wife's contribution in looking after the welfare of the family and bearing and bringing up children for the benefit of the family was considered as part of the contribution to be considered in determining the wife's interest in the assets under consideration.

This Counsel for the applicant urged this court to grant the interim order of injunction which on the balance of convenience tilts in favour of the applicant.

On the part of the respondent, this application was opposed. Counsel for the respondent relied on the respondent's replying affidavit sworn on 2nd March 2006. The respondent admits that there was a marriage between him and the applicant but denies that the properties listed in the applicant's application were purchased with the joint efforts of the applicant. The respondent contends that all the properties were singularly acquired with his own effort and funds from his own law firm. According to the respondent, the applicant has never made any financial contribution. He accused the applicant of being unstable, irresponsible and not even capable of keeping a job.

I have carefully considered the submissions by both parties and the issue for determination at this stage is whether the applicant has set out a prima facie case with a probability of success. The principles governing the granting of an interim order of injunction were long settled abith in civil matters. The present application is not different from other civil matters only that the applicant must satisfy that there was a marriage between the parties and the properties, the subject matter of the dispute are in the name of one spouse and that they were acquired during coverture. The issue of the contributions made by the parties are matters of evidence to await the trial. Thus I need not restate the principles that have been determined by the court of Appeal save to state that the application of **Section 17 of the Married Women's Property Act (MWPA) [1882]** is a statute of general application which is applicable here in Kenya to determine the disputes regarding the wife's share of property during the marriage.

While awaiting the determination of the suit the court can exercise its discretion and preserve the assets which are the subject matter of the suit.

In this regard, I am satisfied that the applicant has established a prima facie case and on a balance of convenience, the scales of justice should tilt in her favour to preserve the status quo. Accordingly the application dated 8th December 2005 is hereby allowed as prayed.

It is so ordered.

Ruling read and signed at Nakuru on 21st July 2006.

MARTHA KOOME

JUDGE