



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

Civil Suit 32 of 2006 (OS

IN THE MATTER OF MATRIMONIAL PROPERTIES

AND IN THE MATTER OF SECTION 17 OF THE MARRIED WOMEN PROPERTY ACT 1882

EUNICE KAINYA KITHINJI.....APPLICANT

VERSUS

GENESUIS KITHINJI.....RESPONDENT

RULING

Before me is an application brought by way of Chamber Summons dated 25th May 2006 filed by Muriuki Njagagua & Company advocates on behalf of the applicant Eunice Kainya Githinji. It was filed under Order XXXIX Rule 1, 2, and 9 of the Civil Procedure Rules and section 3A of the Civil Procedure Act (Cap 21). It seeks for three orders, one of which has been spent, that –

1. (spent)
2. The respondent be restrained by this Honourable court by himself, his servants and or agents from selling, alienating and/or disposing off the following underlisted properties until the hearing and determination of this matter.
 - (i) LR No. Ngong/Ngong/23165 – 0.09 Hectares.
 - (ii) L.R No Ngong/Ngong9321.
 - (iii) Block No. 72/1209/House 110 – Nairobi.
 - (iv) Mwimbi/Central Magutuni/39.
 - (v) Motor vehicle – KAH 520 B(BMW)
 - (vi) Chuka Kanini Ceera – 100 acres
 - (vii) Nanyuki Plot (¼ acre) 68/1980

- (viii) Plot number Tigania Mikinduni (15 acres) title deed not yet out.
- (ix) Mwimbi Kanini Kieni of Mugutuni/391.
- (x) Mikinduri Antuamburi – 15 acres (F/No.135) – Title deed not yet issued.
- (xi) Kanini Kieni of Mugutuni Location (2 acres) – Title deed not yet out.
- (xii) The costs of this application be provided for and any event the same be borne by the respondent.

The application has grounds on the face of the Chamber summons. The grounds are that the applicant and the respondent were married on 26th February 2002. That the two acquired various properties together as man and wife. That their marriage had broken down irretrievably and the respondent had deserted the matrimonial home and had married a second wife. That the respondent was now in the process of selling and/or alienating some of the properties acquired during the subsistence of the marriage. That it was in the interests of justice that the respondent be restrained from alienating any of the properties until the hearing of the matter. The application is also supported by the affidavit of the applicant EUNICE KAINYU KITHINJI sworn on 25th May 2006. The affidavit in support of the application highlights the details of the relationship between the applicant and the respondent and also the acquisition and registration of the matrimonial properties. It also acknowledges that there is Divorce Cause Number 210 of 2005, and HCCC No. 33 of 2005 that were filed and were pending in relation to the same subject matter.

The application is opposed and a replying affidavit sworn by the respondent GENESIUS KITHINJI MURIANKI on 14th June 2006 was filed. It is deponed in the replying affidavit that the properties mentioned as numbers 1(ii), (iii) (iv) and (v) do not belong to the respondent therefore granting the orders sought would merely clog other peoples property without giving them a chance to be heard. It is also deponed that the respondent was not aware of properties listed as (vi), *vii), (viii), (ix), (x) and (xi). It was also deponed that the respondent did not intend to dispose of any of his personal or joint properties.

At the hearing of the application on 19/10/2006 both Mr. Okello for the applicant and Mr. Mbaabu for the respondent addressed me.

I have considered the application, documents filed and the submissions of counsel for both parties. This is an application for an interlocutory injunction. The applicant is firstly required to show a prima facie case with a probability of success. Secondly, an injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury. Thirdly, if the court is in doubt, it will make a decision on the balance of convenience (GEILLA –VS- CASSMAN BROWN).

Has the applicant shown a prima facie case? With the facts before me, I am convinced that the applicant has established a prima facie case with probability of success. The issue touches on matrimonial property. There appears to have been a valid marriage between the parties. The issue of which matrimonial belongs to whom will only be determined on evidence to be tendered. At this stage I cannot go to the substantive decisions as no evidence has been tendered before me. There is the issue raised by the respondent that some properties belong to third parties, that is the children of the marriage. On that my answer is that the evidence before me is that properties might have been registered in the names of the children merely for convenience. A substantive decision on that also will have to be made after hearing evidence, not at this stage.

Will the applicant suffer irreparable loss if the orders sought are not granted? From the facts before me I think so. The applicant has already filed an Originating Summons for division of matrimonial property. It is still pending in court. If any of the assets are sold or disposed of by the respondent now, the applicant will suffer loss which cannot be quantified, and cannot be said that it can be adequately compensated in damages. Therefore it is my finding that the applicant will suffer irreparable loss if the orders sought are not granted.

Consequently, I allow the application and grant the orders sought. The costs of the application will be in the cause.

Dated and delivered at Nairobi this 30th day of November 2006.

George Dulu

Judge