



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC CASE NO. 19 OF 2020**

**LNM.....APPLICANT/PLAINTIFF**

**VERSUS**

**NM.....RESPONDENT/DEFENDANT**

**RULING**

1. Before me is an application brought pursuant to provisions of Article 45(3) of the constitution of Kenya, Sections 7 & 12 (5) of the Matrimonial property Act and Section 13 of the Environment and Land Act. The applicant seeks the following orders:

(i) That this honourable court be pleased to issue restraining and prohibition orders to the respondent and his agents to stop any impending sale of any of their matrimonial properties, within and without Isiolo town pending the hearing and determination of this application and the suit. There is reasonable apprehension that the respondent has already sold the said properties going by his admission even though he has refused to disclose to whom he sold the properties.

(ii) That this honourable court be pleased to order the respondent to reverse the sale of the matrimonial properties and subsequently preserve the same if the said properties have already been sold and maintain status quo prior to the said sale pending the hearing and determination of this application and the suit.

(iii) That the orders be served upon Isiolo county lands office to place a caution and caveat on the suit properties, pending the hearing and determination of the application and the main suit.

(iv) That the costs of this application be provided for.

2. The application is premised on the grounds on the face of the application and in the supporting affidavit of the applicant as well as the oral submissions proffered on 19.10.2020. The applicant contends that she got married to defendant in 1979 but divorced in year 2002. During the validity of their marriage they had acquired matrimonial properties which have apparently been sold by the defendant.

3. It is averred that the applicant never gave consent for the sale of the matrimonial properties. To this end, the consent dated 27.2.2020 has been voided and applicant doesn't wish to be bound by it. After all, the said consent was made after the sale agreement.

4. The applicant further contends that the respondent never made good his promise to her to share the proceeds of sale so the applicant is now abandoning the bargain. It is further argued that defendant is not truthful when he says that the purchaser is in America where restrictions were put in place limiting the amount of money one can send outside America. That the applicant's counsel had even done a transaction of 40 million for another client where the funds were sent from Texas- America that very day of 19.10.2020.

5. The applicant therefore prays for the reversal of the sale of the suit parcels.

6. The application was opposed vide the replying affidavit of defendant dated 20.7.2020. He contends that on 13.12.2019 he entered into a land sale agreement where he decided to sell his properties to a purchaser who resides in America. He duly informed his former wife and they agreed to share the proceeds of sale. The consideration was Shs.24,000,000. He contends that applicant consented to the sale of the properties as per the acknowledgment dated 27.2.2020, where she accepted to retain Shs. 8,000,000. He states that due to the Covid 19 pandemic, the USA government put restrictions on how much money could be sent outside America thus affecting the agreement. Through the submissions of his advocate, the respondent informed the court that he receives Shs.100,000 every month which he was willing to share with the applicant but the latter has declined that offer.

7. I have considered all the issues raised herein. I find that during the oral hearing of the application on 19.10.2020, the counsel for the applicant stated that when they filed the application, they were not aware whether the sale had taken place. They are now aware that sale took place and they desire that the same be reversed. I find that reversal of any completed sale is one of the main prayers in the plaint as captured in prayer 19 (b).

8. In essence the applicant is seeking a substantive prayer at the interlocutory stage. This flies against the provisions of article 50 (1) where it is provided as follows:

***“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body”.***

9. Thus the prayer for reversal of any sale can only be determined after the full hearing of the suit and not at this stage.

10. My attention has also been drawn to the prayer captured on point 19 (c) in the plaint:

***“Equal distribution of the matrimonial properties between plaintiff and the defendant as provided for by the law”.***

11. In light of that prayer, this court will be requesting the parties to address the court on the question of substratum of the dispute in order to gauge the parameters of jurisdiction of this court.

12. In light of the foregoing, I decline to grant any orders at this stage. The application dated 1.7.2020 is hereby dismissed. Costs thereof shall abide the outcome of the main suit.

**DATED, SIGNED AND DELIVERED AT MERU THIS 27<sup>TH</sup> DAY OF JANUARY, 2021**

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**

**ORDER**

The date of delivery of this Ruling was given to the advocates for the parties through a virtual session via Microsoft teams on 19.10.2020. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17<sup>th</sup> March, 2020 and published in the Kenya Gazette of 17<sup>th</sup> April 2020 as Gazette Notice no.3137, this Ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the *Civil Procedure Rules* which requires that all judgments and rulings be pronounced in open court.

**HON. LUCY N. MBUGUA**

**ELC JUDGE**