

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI LAW COURTS)

CIVIL SUIT NO. 42 OF 2002

MARGARET PRISKA MUTUNE APPLICANT

VERSUS

PATRICK MUTUNE KYNZE RESPONDENT

RULING

The Applicant, Margaret Priska Mutune, has filed this Chamber Summons dated 8th October 2002 against her husband Patrick Mutune Kynze in this ruling, also referred to as the Respondent, praying for an order of injunction to restrain the Respondent from approaching the Applicant and from visiting occupying or interfering with the Applicant's ownership and occupation of the properties and businesses numbering up to nine as listed under prayer (2) in the Chamber Summons.

The Applicant further wants the Respondent be given a Penal Notice warning the Respondent of a possible arrest to be charged with disobedience of court orders and the police be ordered to execute the orders.

During the hearing of this chamber summons, it was brought to my attention that the Applicant herein has filed a divorce case against her husband in the Chief Magistrate's Court, Milimani, here in Nairobi being Divorce Cause No. 74 of 2000. It is possible that other interlocutory applications have been or will be filed by the Applicant herein against the Respondent in that divorce cause.

In as much as there may be need for multiplicity of cases and resultant interlocutory applications, such litigations no doubt have the effect of harassing and sometimes confusing the Respondent who may not be having the means of sustaining hired advocates to run from place to place from time to time defending him especially where a penal notice is also threatening. That may explain why the Respondent has not come up in opposition to this application.

In this Civil Suit, whose file is before me, the Applicant came to this court with an originating summons in which she wants the court to declare that the properties and businesses numbered one to nine in this chamber summons are owned by the Applicant absolutely. She further wants that the Respondent be permanently restrained from occupying or interfering with the Applicant's ownership and occupation of the said properties and businesses.

It means that before the Applicant is declared to be the owner of those properties and businesses, evidence will have to be adduced during the hearing of the Originating Summons to satisfy the court that indeed the Applicant is the owner. It is after that that a restraining order could be made against the Respondent and the Applicant should have been patient to wait for the hearing and determination not only of the Originating Summons, but also of the divorce cause and should be keen to see that the two cases are heard and determined without delay for it is those parties that are not keen that delay hearing and determination of their cases only to turn round to make the defenceless court a scapegoat.

When the Applicant therefore comes up as she has done, with a chamber summons asking the court for the Orders she is asking for in the chamber summons dated 8th October 2002 on the basis that the Applicant is the owner of the said properties and businesses I do not see how proper it is to grant the orders prayed for. Since the question of ownership of the properties and businesses has not yet been

proved under the originating summons, how proper is it to-day for me in this chamber summons to say that the Applicant is the owner and that therefore she should be given the orders prayed for in the chamber summons?

I do not think it is proper. The parties are still lawfully married and free to live together as husband and wife sharing many things including the questioned properties and businesses. I should not in this chamber summons begin giving the assets to the Applicant, pushing the Respondent left and right before the divorce cause and the originating summons between the parties are heard and determined.

That being the position this chamber summons dated 8th October 2002 be and is hereby dismissed with no order as to costs as the Respondent never came up in the matter.

Dated this 18th Day of October 2002.

J.M. KHAMONI

JUDGE