



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO.1433 OF 1999

JAME P.T. KUBAI PLAINTIFF

VERSUS

ANNE N. KUBAI DEFENDANT

RULING

The Plaintiff filed this suit against the defendants on 16/7/1999 and sought the following orders among others.

(1) That a temporary injunction do issue restraining the 2nd defendant from entering, upon, developing, carrying out any activity or interfering with the current state of the property known as **TITLE NO.RUIRU/KIU/BLOCK 3/118**. Until final determination of this suit.

(2) A temporary injunction do issue restraining the 1st respondent from disposing off, selling, interfering, transferring or alienating any of the matrimonial properties pending the final determination of the High court Divorce Cause No.116 of 1996 and/or until the court makes an order on settlement of the matrimonial property.

The Plaintiff was accompanied with an application by way of chamber summons under certificate of urgency in which the applicant sought similar orders as those sought in the Plaintiff. Before this application was heard counsel for the defendant raised a preliminary objection to the suit. He submitted that:-

When one alleges that the property is a matrimonial property one is required by law to involve a special Procedure provided by law to determine such matrimonial property. These procedures can take two forms. (I) Under Married women Property Act 1882. Under this Procedure a party during the subsistence of the Marriage a party should take out Originating summons which will list all the properties claimed as matrimonial properties. When such a matter is placed before a single Judge, the Judge has power to consider all issues relating to financial matters.

The second manner in which issues of matrimonial property can be entertained by the court is where the parties have a Divorce Cause in court. In such circumstances a party who alleges to lay claim on matrimonial property is supposed to file a chamber summons in that divorce cause enumerating all the properties alleged to be matrimonial property. After which the parties would then be required to make representatives to court in respect of the extent of their interest.

The present claim was brought by way of a plaintiff and hence the proper procedure was not followed. In prayer (a) (ii) the Plaintiff prays that the court do declare that the suit property **No.RUIRU/KIU/BLOCK3/118** is matrimonial property. Prayer "C" seeks a temporary injunction to restrain the 1st defendant from disposing off any of the matrimonial properties until the divorce cause is

heard, and determined and order of settlement of the matrimonial property will have to be made. A relevant order on the settlement of the matrimonial property to be made will have made. In order for that to take place, the proper procedure has not been followed.

Further the said suit property has been transferred to one **PATRICIA WANGUI MURIUKI**. Which transfer was effected on 25/5/1999. She had carried out a search before she purchased the said suit property. The search certificate issued to her on 20/5/1999 confirmed that the same was registered in the name of Anne Ntikore Muriuki.

The property was free of all encumbrances, and the certificate of official search is conclusive evidence of interest touching title under the Registered Land Act Cap 300.

The said 2nd respondent was not a party to the matrimonial aspect of the suit property. She will not have any evidence to give in the two prayers sought by the Plaintiff in the suit. Hence there is no basis in law for the 2nd respondent to be restrained from entering into or developing a property she has purchased in strict compliance with the Laws of this land. If anything the Plaintiff can be adequately compensated for any loss if any in damages, and therefore orders for an Injunction are unwarranted.

For the above reasons the preliminary objections is upheld. The claim of the Plaintiff and the prayers being sought cannot be entertained or given in a cause of action brought by way of a Plaint.

The Plaint is therefore struck out for being incurably defective. The defendant is also entitled to the costs of this application as well as the entire suit.

These are the orders of this court.

Dated and delivered at Nairobi this 9th day March, 2000

J.L.A. OSIEMO

JUDGE