



**PNM v JMW (Matrimonial Cause E002 of 2022)
[2023] KEHC 2165 (KLR) (23 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2165 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
MATRIMONIAL CAUSE E002 OF 2022**

**M MUYA, J
MARCH 23, 2023**

BETWEEN

PNM APPLICANT

AND

JMW RESPONDENT

RULING

1. By way of notice of motion application dated July 13, 2022 and which is expressed to be brought under order 40 rule 1 and 2 of the *Civil Procedure Rules*, the applicant seeks the following, orders:-
 1. That pending the hearing and determination of the cause the Respondent, his agent, Servants or his employees' be restrained by a temporary injunction from interfering with the applicants peaceful occupation of the portion of land the applicant is in occupation of and cultivating in L.R.Nyeri/Endarasha/xxxx or any other resultant subdivision of LR.Nyeri/Endarasha/xxxx
 2. That the Respondent pending the hearing and determination of the cause be restrained by a temporary Injunction from selling and or disposing LR. Nyeri/Endarasha/xxxx or any other resultant Parcel of land resulting from the subdivision of LR.Nyeri/Endarasha/xxxx,xxxx,xxxx,xxxx,xxxx,xxxx,xxxx,xxxx,xxxx and xxxx
2. The grounds are as set out below:-
 1. The Applicant is a wife to the Respondent and the parcel of land is matrimonial property
 2. The Respondent is intent on ensuring, the Applicant gets no share of the property when the marriage is dissolved.
3. The orders sought by the Applicant herein are in the nature of injunctive reliefs.



4. In the Celebrated case of *Giella Versus Cassman brown* (1975) EA 358 the Principles for grant of injunction were spelt out thus:-
 1. A Prima facie case with high chances of success has to be established.
 2. Whether the applicant would suffer irreparable harm if the injunction is not granted.
 3. Whether the balance of convenience tilts in favour of the applicant.
5. In his replying affidavit the Respondent depones that a similar suit being Matrimonial Cause No.72 of 2020 was dismissed by the court hence the present one is Res judicata. He further depones that he is the absolute registered owner of LR.Nyeri/Endarasha/xxxx which he acquired in 1963.
6. Further that he bought it vide a loan and finished payment in the year 1970 with the help of his first wife.
7. That the applicant stopped helping him since the year 2011 and her sons have constructed for her a house on the piece of land without his consent.
It is his contention that he decided to subdivide the land after the applicant placed a caution on it.

Analysis and Conclusion

8. The Respondent does not deny the fact that the applicant is one of his wives. He further does not deny that there are children from the marriage. His main contention appears to be the fact that he bought the land way back in the year 1963 and finished purchasing it in 1970. It is further his contention that it's not matrimonial property.
9. Section 17(1) of the *Matrimonial property Act* 2013 provides:-

“A person may apply to a court for declaration of rights to any property that is contested between that person and a spouse or a former spouse.”
10. Reliance has been placed in the case of *BWK -VS- EMG* (2015) e KLR where the court held:-

Section 17 (2) © of the *matrimonial property Act* 2013 allows for filing an application tender Section 17 © of the Act for declaration of rights to property, notwithstanding that a Petition for divorce has not been filed under any law relating to matrimonial causes”
11. The Respondent maintains that a matrimonial case cause no 72 of 2020 was heard and determined and that it contained similar prayers as the ones obtaining in the present application. There is no such annexure to his replying affidavit and hence nothing much can be attached to his averment.
12. I find that the applicant has made a Prima facie case with high chances of success as there is no dispute that she is a wife of the Respondent and she has a home in the land in dispute and they have children of the marriage
13. Whereas the Respondent depones that he acquired the suit property in 1963. He has not provided any documentary evidence to that effect.
14. The Applicant on the other hand contends that she was married in the year 1980 and that the suit property was acquired in the year 1993. She has attached a search certificate to that effect.
15. There is therefore, the need to preserve and safeguard the suit property so as to allow both parties right to peaceful enjoyment before proceedings to establish each parties rights to it are determined. There is evidence to the effect that the Respondent has subdivided the property with the intention of disposing



it to other parties. To that end the applicant will suffer irreparable damage. The balance of convenience tilts in favour of granting the prayers sought.

16. I am satisfied that the application has merit and it's allowed in terms of prayers 1 and 2 of the application.

RULING READ, SIGNED AND DELIVERED IN OPEN COURT AT NYERI THIS 23RD DAY OF MARCH, 2023.

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HON. JUSTICE MARTIN M. MUYA

JUDGE

In the presence of:

Gitahi Muchiri holding brief for Kiminda: Applicant

.....Respondent

Court Assistant: Kinyua

30 days R/A.

