



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**CIVIL SUIT NO. 61 OF 2019 (OS)**

**MKM.....PLAINTIFF/APPLICANT**

**VERSUS**

**VWK.....DEFENDANT/RESPONDENT**

**RULING**

1. The plaintiff MKM and the defendant VWK got married on 27<sup>th</sup> February 1993. They divorced, either in Nairobi Divorce Cause No. 85 of 2013 (according to the plaintiff) or in Nairobi Chief Magistrate's Court Divorce Cause No. 82 of 2014 (according to the defendant). One of the properties that was bought during the marriage was LR No [Particulars Withheld] (I.R. 9\*\*\*\*). It is in Muthaiga North. The plaintiff's case is that he bought it in March 2006 and registered it in the defendant's name. The defendant, on the other hand, states that she was the source of the money that bought the property. When the couple parted, the plaintiff was left with the original title deed of the property. The defendant has since obtained a provisional title deed to the property. She wants to sell the property to raise money to take care of her ailing mother.

2. On 27<sup>th</sup> September 2019 the plaintiff filed originating summons seeking a declaration that this property and another LR No. [Particulars Withheld] (IR 6\*\*\*\*) were singlehandedly bought by him and registered in the name of the defendant; and that the defendant was registered to hold the properties in trust for him. He asked for an order that the defendant does unconditionally transfer the properties to him. The cause makes reference to other properties in respect of which he sought orders. The cause was filed along with a notice of motion seeking the defendant to be restrained from selling, alienating, leasing, mortgaging, charging, transferring or in any other manner whatsoever interfering with LR No. [Particulars Withheld] (IR 9\*\*\*\*) until the suit is heard and determined. The defendant opposed the application. Instead she sought that she be allowed to sell the property as indicated above. She claimed that the dissolution of the marriage has left her in distress as the plaintiff was left with most of the property, some of which he has since sold.

3. An interlocutory injunction is a court order to compel or prevent a party from doing certain acts pending the final determination of the case. It is intended to maintain the *status quo* until the case is heard and determined. An applicant who seeks an interlocutory injunction has to establish a *prima facie* case which a probability of success against the respondent. He has to show that he will suffer irreparable injury or loss if the injunction is not granted. If the court is in doubt the matter will be decided on the balance of convenience. (**Giella –v- Cassman Brown [1973] E.A) 358**).

4. It is clear that the court will be asked to determine the interest of either party in the property, which is certainly matrimonial property. The defendant wants to sell it, and she will do so if an injunction is not granted. She has obtained a provisional title deed to the property for this purpose. The title deed was obtained with full knowledge that the plaintiff held the original title deed. If the property is sold the subject matter of the cause will have dissipated.

5. Under **section 14** of the **Matrimonial Property Act, 2013** where matrimonial property is acquired during the marriage in the name of one spouse, there is presumption that the property is held in trust for the other spouse. The plaintiff's case is that he bought this property and registered it in the name of the defendant; that the defendant therefore holds it in trust for him. It is trite that matrimonial property's ownership depends on the contribution that went into its acquisition.

6. I determine that, if the application is not allowed the defendant will sell this property and that will render the plaintiff's claim to it an exercise in futility. I determine that the conditions for the grant of interlocutory injunction have been established. I consequently allow the notice of motion in terms of prayer 3.

7. Costs shall be in the cause.

**DATED and SIGNED at NAIROBI this 6<sup>TH</sup> FEBRUARY 2020**

**A.O. MUCHELULE**

**JUDGE**

**DATED and DELIVERED at NAIROBI this 13<sup>TH</sup> FEBRUARY 2020**

**A.N. ONGERI**

JUDGE