



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL SUIT NO. 52 OF 2014 (OS)

MNN.....APPLICANT

VERSUS

GMN.....RESPONDENT

SNN.....INTERESTED PARTY

RULING

1. On 22nd January 2019 February, MNN (hereafter 'the Applicant'), under Certificate of Urgency, filed a Chamber Summons application dated 21st January 2019 seeking an interim order for injunction restraining GMN (hereafter 'the Respondent'), the interested party, their children servants and/or agents from entering, remaining upon trespassing, visiting, selling damaging or otherwise interference with the Applicant's possession and occupation of matrimonial home LR NO. [particulars withheld], KILELESHWA NAIROBI (hereafter 'the suit premises') pending hearing and determination of the suit.
2. On 23rd January 2019, the Respondent filed a Notice of Motion Application dated on the same day seeking an injunction against the Applicant, retraining herself, her servants and agents from accessing and quite enjoyment of the suit premises. He also sought full access and enjoyment to the suit premises.
3. Both applications were heard simultaneously by way of affidavit evidence and submissions from learned counsels representing the parties.
4. In support of the Applicant's Chamber Summons, the applicant deponed that she had been living on the suit premises since 1980 and had never shared the premises with anyone save for her children. She stated that the Respondent had moved out of the home in 2010 when he filed divorce proceedings. That, on 18th January 2019 in the company of the interested party's children and hired goons, the Respondent broke the gate and forcefully entered the premises. She avers that she has since been living in fear of being forcefully evicted and the subsequent sale of the premises which is her matrimonial home. It was her claim that neither the interested party, nor her children have ever lived on the suit premises.
5. In his supporting affidavit to the Notice of Motion Application, the Respondent averred that he was the registered owner of the suit premises. He stated that the Applicant had denied him access to the premises by changing locks. It was his disposition that, the premises constituted his personal office and his bedroom with personal effects. He claims that he has no intention of evicting the applicant but only wants access to his bedroom and office which contains official documents and personal belongings.
6. In response to the Chamber summons filed by the Applicant, the Respondent filed a replying affidavit dated 28th January, 2019. He contended that the Applicant moved into the suit premises in 1988 and not 1980 as contended. Further, that the said premises was not matrimonial premises since it was acquired before his marriage to the Applicant and that their marriage has since been dissolved. He admitted breaking into the house but stated that his acts were justified since the Applicant had denied him access to his bedroom and office. He also denied hiring goons to break into the house or threatening to evict the Applicant. He reiterated his prayer that he be granted access to the premises.
7. In further response, the interested party deponed by way of replying affidavit dated 30th January, 2019 that she was the first wife to the Respondent. She averred that they acquired and developed the suit premises jointly and resided thereon until 1988 when the Applicant joined them. She claimed that her children have a stake in the suit premises but were denied access by the Applicant. She prayed for the Applicants application to be dismissed with costs.
8. On her part, the Applicant filed a replying affidavit dated 31st January, 2019 in response to the Respondent's application. She denied claims that she did not have a stake in the premises and also refuted allegations that she had changed the locks to deny the Applicant access.

She insisted that the Respondent moved out of the premises in 2010 and thereafter ceded his bedroom to their deceased daughter Irene. She further stated that, to date the room is occupied by her grandchildren (Irene's children) who are of tender years

9. She refuted claims that the Respondent had an office on the premises which she had denied him access to. She insisted that the Respondent had never set foot on the suit premises since the demise of their child in 2018 until he broke into it in January, 2019. On the interested party, she claimed that they have a separate home but it was unclear where she and her children resided but it was certainly not on the suit premises. She claimed that she felt unsafe and the only recourse would be the grant of the orders sought.

10. On 31st January 2019 when the matter came to Court for directions, by consent of the parties, the Court ordered a visit by the Deputy Registrar to the suit premises. A Report dated 15th February, 2019 was prepared filed in court.

11. On 21st February, 2019 learned Counsels for the parties submitted on their applications. Mr. Karimi for the Applicant, Mr. Makumi for the Respondent and Mr. Mambiri for the interested party were in agreement that the main issue for determination was whether the Respondent should be granted access to the premises.

12. Having carefully considered the pleadings and the Report by the Deputy Registrar, I make the following findings.

From the Report of the Deputy Registrar who had an opportunity to visit the premises in issue, his findings were that:

- i. The house is a four bedroom bungalow with an adjacent servant quarters.**
- ii. The master bedroom had a wardrobe which contained the Respondent's old clothes and some documents.**
- iii. The bedroom also contained clothing of children who utilized the room.**
- iv. There exists no office in the house.**

13. After the report was filed in Court, counsel for the Applicant ceded ground that the Respondent was at liberty to access the compound but not the house because there was no office as claimed. That, during such access he should not be accompanied by third parties or guests. Mr. Makumi for the Respondent contended that the Respondent's clothes and documents were proof of his residence in the home. He prayed for full access to the premises. Mr. Mambiri for the interested party supported the Respondent's prayer for access together with the interested party.

14. From pleadings of the parties and the Report filed, it is clear that the neither the Respondent nor the Interested party currently reside on the suit premises. The suit premises is occupied by the Applicant and her children.

15. It was the Applicant's case, that although she had been in continuous sole possession of the premises since the Respondent vacated, she felt unsafe due to the Respondent's invasion in January 2019. She protested that she would be rendered homeless were he to evict her pending the hearing of the suit. The Respondent stated that he only broke in because he was denied access to the premises. He however failed to show the nature of prejudice that he was likely to suffer or was suffering after he was denied access. Further, there has been no reason advanced for the supposed access as the issue of ownership and contribution towards the premises cannot be determined at this stage.

16. The Interested party also averred that she had a claim over the suit premises. She admitted that she had not been living thereon and her children only went to the premises to visit the only place they knew was their home but they were denied entry.

17. From the foregoing, I find that the reasons advanced by the Respondent and the Interested party are not sufficient for this Court to grant the orders of access to the suit premises pending the hearing and determination of this suit. In the converse, I am satisfied that the interest of justice will be better served by maintaining the status quo while the Court determines the dispute. The status quo to be maintained herein is the status quo before the suit premises was broken into by the Respondent.

18. Reasons wherefore the Court finds that the Respondent's application dated 23rd January, 2019 is lacking in merit and is consequently dismissed. The Applicants Chamber summons dated 21st January, 2019 be and is hereby allowed. Each party to bear their own costs.

SIGNED DATED AND DELIVERED IN OPEN COURT THIS 14TH DAY OF MARCH, 2019.

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L. A. ACHODE

HIGH COURT JUDGE

In the presence of.....Advocate for the Applicant

In the presence of.....Advocate for the Respondent

In the presence of.....Advocate for the Interested Party