



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
CIVIL SUIT NO. 17 OF 2019 (O.S)
IN THE MATTER THE MATRIMONIAL PROPERTY ACT 2013
AND
IN THE MATTER OF THE LAND REGISTRATION ACT
WKM.....APPLICANT

VERSUS

RNK.....RESPONDENT

RULING

1. The Application coming for consideration in this Ruling is the one dated 24.6.2019 seeking the following orders:

(i) **THAT the instant Application be certified urgent.**

(ii) **THAT pending the hearing and determination of this Application, an urgent temporary injunction do issue restraining the Respondent, her servants and/or agents from wasting, damaging or alienating and/or otherwise interfering with the following matrimonial properties and/or the Applicant's possession therein:**

(a) LR No. NGONG/NGONG/XXX

(b) LR No. NGONG/ KISERIAN /XXX

(c) Plot No. XXXX Housing Scheme

(d) Plot Share Certificate No. XXX Estate Nairobi

(e) Motor Vehicle Registration No. XXX

(f) Ongoing Business in the name "XX and Restaurant" within Dagoretti Corner Estate in Nairobi County

(g) Equity Bank Account Number XXXX

(iii) **THAT pending the hearing and determination of the Originating Summons dated 25th March 2019, the Respondent be restrained by way of temporary injunction whether by herself, her agents, servants and/or employees or any persons claiming under her or otherwise howsoever from alienating, disposing, selling, encumbering, assigning, transferring or in any other like manner dealing with properties listed in paragraph 2 above.**

(iv) **THAT orders do issue compelling the Respondent to submit all business proceeds for the ongoing business in the name of "XXX and Restaurant" within Dagoretti Corner Estate in Nairobi County, rent proceeds and bank statements of the Respondent and any documents pertaining to the above properties for accounting clarification and transparency.**

(v) **THAT an Order that inhibition and restriction shall be registered in the landed properties as well as the vehicles namely:**

(b) LR No. NGONG/NGONG/XXX

(c) LR No. NGONG/ KISERIAN /XXX

(d) Plot No. XXX Housing Scheme

(e) Plot Share Certificate No. XXX Estate Nairobi

(f) Motor Vehicle Registration No. XXX

(g) THAT costs for this Application be in the cause.

2. The Application is supported by the Affidavit WKK in which he has deposed that the Respondent under Kikuyu Customary Law sometimes in 2009. The marriage was not blessed with any issues.

3. The applicant further stated that Marriage is subject of Court Proceedings in Milimani C.M's Court Divorce No. XX of 2019 which is still pending in Court.

4. He further said that during the subsistence of the marriage, he acquired the property listed in 1(ii) above and registered them in the name of the Respondent who has custody of the documents.

5. The Applicant deposed that he has been evicted from the matrimonial home and he is not able to access the relevant documents of title which are in custody of the Respondent.

6. The Applicant also stated in his affidavit that he was involved in the family business and he therefore contributed directly and indirectly towards the acquisition of the properties.

7. The Respondent filed a Replying Affidavit sworn on 4.7.2019 in which she had deposed that the Respondent was only her boyfriend and further that the Applicant should await the outcome of Divorce Cause No. XX of 2019.

8. The Respondent also stated in her affidavit that the Applicant has never stayed in LR No. NGONG/KISERIAN/XX but could only visit her occasionally during weekends and therefore it cannot be true that he was evicted.

9. The parties filed written submissions which I have duly considered. I find that it is not in dispute that the parties have a divorce cause No. XX of 2019.

10. I find that while it is true that the Court cannot distribute Matrimonial property before the divorce is granted, it is in order to preserve the said matrimonial property pending the divorce proceedings.

11. The Conditions for grant of an injunction are well established in the case of **Giella Vs Cassman Brown and Co. Ltd. [1973] EA 358** as follows:

“First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience (E.A. INDUSTRIES VS. TRUFOODS [1972] E.A. 420.)”

12. In the Current case I find that the Applicant stands to suffer irreparably should the Court find that he was married to the Respondent and that the properties were acquired during the subsistence of the marriage.

13. I also find that it is not true that this Court lacks jurisdiction to hear this matter. The issues of jurisdiction are premised in **OWNERS OF THE MOTOR VESSEL “LILLIAN S” vs. CALTEX OIL (KENYA) LTD [1989] KLR 1** which provides that:

“...Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

14. **Section 17** of the matrimonial Property Act 2013 gives this Court the power to grant preservatory orders pending hearing and determination in Divorce Cause No. XX of 2018.

15. **Section 17** of the Matrimonial Property Act 2013 grants a party right to file an application before division of matrimonial property proceedings and provides:

(1) A person may apply to a court for a declaration of rights to any property that is contested between that person and a spouse or a former spouse of the person.

(2) An application under subsection (1)—

a) Shall be made in accordance with such procedure as may be prescribed;

b) May be made as part of a petition in a matrimonial cause; and

c) May be made notwithstanding that a petition has not been filed under any law relating to matrimonial causes.

16. I grant the orders for preservation of the properties until the determination of the divorce cause. The said properties are listed in the Application as follows:

(g) LR No. NGONG/NGONG/XXX

(h) LR No. NGONG/ KISERIAN /XXX

(i) Plot No. XXX Housing Scheme

(j) Plot Share Certificate No. XXX Estate Nairobi

(k) Motor Vehicle Registration No. XX

(l) Ongoing Business in the name “XXX and Restaurant” within Dagoretti Corner Estate in Nairobi County

(n) Equity Bank Account Number XXX

DELIVERED, DATED AND SIGNED IN OPEN COURT THIS 11TH DAY OF OCTOBER, 2019

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.