



**REPUBLIC OF KENYA**  
**ENVIRONMENT & LAND COURT**

**AT KITALE**

**ELC SUIT NO. 97 OF 2016**

**C R N K .....PLAINTIFF/APPLICANT**

**=VERSUS=**

**L K M .....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**F M.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING.**

1. The applicant alleges to be the second wife of the first Respondent. She states that she has been married to the first Respondent for the last eleven (11) years. On **26<sup>th</sup> May 2016**, the first Respondent in company of hired goons went and demolished a semi-permanent structure built on **plot no.[Particulars Withheld]** measuring **0.5 acres** (suit land).

2. The applicant contends that the suit land was jointly acquired by her and the first Respondent and constituted their matrimonial home. That the suit land has since been sold to the second Respondent. That as a result of this, she has been rendered destitute. She therefore prays for injunction Orders in terms of the Notice of Motion dated **8<sup>th</sup> June 2016**.

3. The applicant's application is opposed by the first Respondent based on a Replying Affidavit sworn on **29<sup>th</sup> August 2016**. The first Respondent contends that there is no marriage between him and the applicant. That he is lawfully married to one wife under Christian marriage and that the applicant was only her lover who now wants to force herself into his marriage. That the suit land was bought by him well before he started a relationship with the applicant.

4. The first Respondent therefore contends that the application herein is misconceived and should be dismissed with costs to the first Respondent.

5. I have gone through the application, supporting affidavit as well as the annexures thereto. I have also gone through the first Respondent's response and annexure in the replying affidavit. The submissions by counsel have also been considered. This is an application for a temporary injunction and the principles which govern such applications were well set out in the celebrated case of **Giella Vs Cassman Brown & Co. ltd (1973) EA 358**.

6. The first principle in the ***Giella case (supra)*** is that an applicant must demonstrate that he has a prima facie case with probability of success. Secondly, an injunction will not normally be granted unless otherwise the applicant might suffer loss which will not be compensated in damages. Thirdly, if the court

is in doubt, it will decide the application on a balance of convenience.

7. The only issue for determination at the moment is whether the applicant has demonstrated that she is entitled to the injunction sought. To begin with, the purpose of a temporary injunction is to preserve the property in issue. In the instant case, the house which, the applicant alleges to be their matrimonial property has already been demolished. The property has also been sold. To this extent, her application has been overtaken by events.

8. The applicant has not come out clearly to say when she allegedly married the First Respondent. The first respondent has annexed a copy of certificate of marriage which was solemnized under the ***African Christian Marriage and Divorce Act (Cap 151)*** (now repealed). Under the said Act, a person is not permitted to contract a second marriage and if one attempts to do that before divorcing, then that is a criminal offence.

9. The applicant has annexed some copies of memorandum of understanding between her and the first Respondent. A reading of these memoranda shows that the relationship between the two has not been rosy. The memoranda were signed as a truce to the turbulent relationship. This cannot be taken as a sign of co-ownership of the suit land. To this extent, I do not find that the applicant has demonstrated that she has a prima facie case against the first Respondent.

10. Should it turn out that indeed the property was bought through the joint efforts of the two, then the applicant can easily be compensated in damages. I am not in any doubt as to the application before me as to consider the balance of convenience. I therefore find that the applicant's application cannot be allowed. The same is hereby dismissed with costs to the first Respondent.

It is so ordered.

Dated, Signed and Delivered this at ***Kitale*** this ***20<sup>th</sup>*** day of ***January, 2017***

**E.O .OBAGA**

**JUDGE**

In the presence of :-

Mr Karani for the Plaintiffs/Applicant

Mr Chebii for the 1<sup>st</sup> Defendant/Respondent

Court Assistant : Isabellah

**E.O .OBAGA**

**JUDGE**