



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MATRIMONIAL CAUSE NO 7 OF 2016

M C L.....APPLICANT

VERSUS

W K L.....RESPONDENT

RULING

INTRODUCTION

1. The application before court is dated 7th April, 2016. In it, A C L (hereinafter the applicant) seeks orders:

1. Spent

2. That pending the hearing and determination of this application, and the originating summons filed herewith, this honourable court be pleased to issue a temporary injunction against the respondent, his assigns, agents and/or employees from alienating, subdividing, disposing and/or in any way interfering with the suit properties known as RONGAI/RONGAI/[particulars withheld] and LR.NO. particulars withheld] all situated in Rongai.

3. The costs of this application be provided for.

2. The application is premised on grounds that:

a) The applicant and respondent got married sometimes in the year 1971, under Kalenjin Customary Law.

b) That after the marriage, both the applicant and respondent started cohabiting as husband and wife and were blessed with seven children.

c) That during the subsistence of the marriage, the applicant and the respondent herein acquired properties known as LR.NO.RONGAI/RONGAI/[particulars withheld] and LR.NO. /[particulars withheld] all situated in Rongai.

d) That the applicant and respondent built their matrimonial home on the parcel of land known as LR.NO. [particulars withheld] which is adjacent to the parcel of land LR RONGAI/RONGAI[particulars withheld].

e) That the applicant started cultivating and keeping livestock on both parcels of land as a mode of subsistence and also as a means of income for her to assist in maintaining the family.

f) That the applicant and respondent herein were legally separated by a decree of the court that was given on the 19th day of October, 2004 and issued on the 8th April, 2014.

g) That the decree of the court given on the 19th October, 2004 and issued on the 8th April, 2014 also ordered the applicant herein to retain possession of both parcels of land and utilize them for the upkeep of the children.

h) That the applicant is apprehensive that the respondent is in the process of disposing the parcels of land which are matrimonial properties.

i) That the applicant stands to suffer irreparable harm should the respondent be able to dispose the matrimonial properties herein.

j) That it is in the interest of justice that this suit be allowed.

The applicant has further sworn an affidavit in support on 7th April, 2016.

3. The application is opposed with the respondent filing a replying affidavit sworn on the 9th day of May, 2016.

THE APPLICANT'S CASE

4. In a nutshell, the applicant's case is that she got married to the respondent in the year 1971 under Kalenjin Customary Law. They are blessed with seven (7) children. During the subsistence of the marriage, they acquired properties known as LR. NO.Rongai/Rongai/[particulars withheld] and No. /[particulars withheld] all situate in Rongai.

5. The couple built their matrimonial home on LR.NO. [particulars withheld]. They were however separated by a decree of court given on 19th October, 2004 where it was ordered that the applicant herein was to retain both parcels of land hereinabove and utilize them for the upkeep of their children.

She is now apprehensive that the respondent is in the process of disposing the parcels of land which are matrimonial properties.

6. It is the applicant's case that though the property is registered in the names of the respondent, she (the applicant) contributed to the purchase of the property and save for the monetary contribution, she contributed through non monetary contribution in:

- a) Giving the respondent companionship
- b) Domestic work
- c) House management
- d) Farm work

7. Pursuant to the court orders aforesaid, the applicant has been enjoying quiet possession of the properties until some time in 2010 when the respondent started sending surveyors to the land with a view to subdividing it. A caution was lodged at the lands registry. The respondent however went ahead to sub-divide the land LR NO.Rongai/Rongai/[particulars withheld] into various parcels and an official search showed titles had not been issued yet.

THE RESPONDENT'S CASE

8. The respondent's case is that he has not subdivided parcel No.LR[particulars withheld] which is thirty (30) acres where the applicant resides. It is denied that the applicant contributed to its purchase neither to the construction of the matrimonial home.

9. There is admission that title to LR Rongai/Rongai/[particulars withheld] (Chepseon) was subdivided in 2014 and titles to the subdivision have been issued. The mutation form, letter of consent to subdivision and certificates of compliance are annexed as evidence. The original land certificate was surrendered to the lands office and closed for subdivision.

10. The resulting subdivisions and the respective beneficiaries are listed in paragraphs 11 of the replying affidavit as follows:

- | <u>PARCEL NO.</u> | <u>BENEFICIARY</u> |
|--|---------------------------|
| i. RONGAI/RONGAI BLOCK /[particulars withheld] | A K T |
| ii. RONGAI/RONGAI BLOCK /[particulars withheld] | J K T |
| iii. RONGAI/RONGAI BLOCK /[particulars withheld] | A C L |
| iv. RONGAI/RONGAI BLOCK /[particulars withheld] | J C L |
| v. RONGAI/RONGAI BLOCK /[particulars withheld] | E C L |
| vi. RONGAI/RONGAI BLOCK /[particulars withheld] | F C L |
| vii. RONGAI/RONGAI BLOCK /[particulars withheld] | E C L |
| viii. RONGAI/RONGAI BLOCK /[particulars withheld] | E C L |
| ix. RONGAI/RONGAI BLOCK /[particulars withheld] | W L |

- x. **RONGAI/RONGAI BLOCK** /[particulars withheld] **F C L**
- xi. **RONGAI/RONGAI BLOCK** /[particulars withheld] **E C L**
- xii. **RONGAI/RONGAI BLOCK** /[particulars withheld] **J C L**
- xiii. **RONGAI/RONGAI BLOCK** /[particulars withheld] **A C L**
- xiv. **RONGAI/RONGAI BLOCK** /[particulars withheld] **KENYA ELECTRICITY TRANSMISSION COMPANY**

The respective title deeds are exhibited.

11. It is added that save for parcel No.Rongai/Rongai Block [particulars withheld] and Block [particulars withheld], all the beneficiaries of the other subdivisions are the children of the applicant and the respondent.

12. Parcel No.Rongai/Rongai/Block [particulars withheld] was sold to the Kenya Electricity Transmission Company to get money to discharge Rongai/Rongai Block [particulars withheld] over a loan of Kshs.1,000,000/= with National Bank of Kenya.

13. The applicant's affidavit is impugned in that the applicant is said to have left the country on 5th February, 2016 and returned in May and it is doubtful that she appeared before a Commissioner of Oaths on 7th April, 2016 as her affidavit purports.

14. Both counsel relied on the pleadings and affidavits on record without, further submissions.

15. I have had regard to the application, the supporting grounds, affidavit in support and the replying affidavit and all the annexures thereto.

16. Of determination is whether the applicant has met the threshold for the issuance of temporary injunction pending the hearing and determination of the originating summons herein. The issue of costs too needs to be determined.

17. It is common ground that the applicant and the respondent are husband and wife. The applicant resides on land parcel No.LR [particulars withheld]. The respondent confirms that that land is intact and he has not sent any surveyor there.

18. From the foregoing, it is clear that it is necessary to conserve LR NO. [particulars withheld] pending the hearing and determination of the originating summons herein.

19. As regard LR No.Rongai/Rongai/[particulars withheld], there is evidence that this parcel of land was subdivided in 2014 long before this application was filed and new titles issued. Other than one beneficiary, the few titles went to the children of the applicant and the respondent. The prayer for injunction directed at this parcel of land is overtaken by events.

20. With the result that the applicant is partially successful in this matter. I allow the application dated 7th April, 2016 in terms of prayer 2 specifically directed to parcel of land LR NO. [particulars withheld]. In view of the partial success, each party to bear its own costs.

Dated, signed and Delivered at Nakuru this 8th day of February, 2017

A. K. NDUNG'U

JUDGE