

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 15 OF 2016 (OS)

B N N.....PLAINTIFF****

VERSUS

S M N.....DEFENDANT****

RULING

1. On 6th May 2016, the plaintiff filed an Originating Summons dated 5th May 2016 seeking declarations on assets listed in the summons, with an eye to division thereon following dissolution of her marriage to the defendant. The plaintiff simultaneously filed a Motion, of even date, seeking restraining orders with regard to the assets in the Originating Summons pending the hearing and disposal of the summons.
2. The application is opposed. The defendant has filed a Notice of Preliminary Objection and Grounds of Opposition dated 18th May 2016, and an affidavit in reply sworn on 19th May 2016. His principal complaint is that the orders sought in the Originating Summons are the same as those in the divorce proceedings between the two parties filed in CMCDC No. 2016.
3. It was agreed by consent of the parties that the Motion be disposed of by way of written submissions. The parties have since filed their respective written submissions, which I have had occasion to read through and to note the arguments made therein.
4. An application in the mold of the Motion before me is one that ought to be allowed as a matter of course, given that the assets the subject of the Originating Summons ought to be preserved to await determination thereof, for failure to preserve the same is likely to render the hearing and determination thereof an academic exercise should the said assets be disposed of.
5. What should be of interest in the matter is the objection by the defendant that the orders sought in the suit herein are similar to the orders sought in the divorce cause. He has exhibited a copy of the pleadings filed in CMCDC No. 2016 by the plaintiff. I note that she seeks injunctive orders against the defendant with respect to Kamiti Corner LR No. [.....] (IR No.[.....]) and Toyota Mazda registration mark and number KBF[....] . She seeks a declaration that the said two assets are held by the defendant in trust for her.
6. The plaintiff has not responded to that aspect of the defendant’s opposition to her application, and that matter was not even adverted to in the written submissions.
7. I have perused the pleadings filed by the plaintiff herein, and noted that the assets listed are over and above the land and the car referred to in the divorce proceedings. There is reference to another car, KBK [...], money in a bank account and assorted household goods. This then means that the prayers herein, on the alleged matrimonial property are not exactly the same as those in the divorce proceedings.
8. Regarding the money in the account, the circumstances under which the plaintiff would like those funds divided have not been pleaded. Each party is entitled to work and earn their keep. It would be unjust to restrain a party from operating their bank account for that is likely to expose them to hardship. On the household goods listed in prayer 3 (e), I note that the items listed are in very general terms. There is no specificity, nor clear description of the items. A radiogram or television set have reference numbers. I note the plaintiff has not exhibited copies of sales receipts to demonstrate that those items had been

bought, nor photographs to show that they exist.

9. I reiterate what I have stated in paragraph 4 hereabove, and say that the prayers sought herein ought to be granted as a matter of course. I shall accordingly allow the application dated 5th May 2016 in terms of prayer 3 (b) (iii). Costs shall be in the cause.

DATED, SIGNED and DELIVERED at NAIROBI this 2ND DAY OF JUNE, 2017.

W. MUSYOKA

JUDGE