



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC. NO. 128 OF 2015

JENIFFER NAFULA KILWAKEPLAINTIFF

VERSUS

JASON KILWAKE & ANOTHER.DEFENDANT

RULING

1. The applicant Jeniffer Nafula Kilwake is the first wife of the first respondent Jason Kilwake. The applicant filed a suit against the first respondent and another person seeking a declaration that Plot No. 300 at Gidea Settlement Scheme(suit land) belongs to her. She contemporaneously filed a notice of motion in which she seeks an injunction against the second respondent restraining him from interfering with the property in any manner. She also prays for an order of eviction against the second respondent from the suit land.

2. The applicant contends that she is the one who purchased the suitland and that the same was only registered in the first respondent's name to hold it in trust for her. That the suit land is five acres and that the first respondent has sold three acres thereof to the second respondent without her consent or knowledge.

3. The applicant's application is opposed by both respondents who have filed separate replying affidavits. The first respondent contends that he is the one who bought the suit land which was originally five acres but that he bought one more acre making it six acres. He settled the applicant and his second wife on the suit land.

The applicant started causing problems between her and her co-wife. This forced the first respondent to sell three acres of the suit land. He used the money to purchase three acres elsewhere where he settled the applicant's co-wife. The three acres were sold to the second respondent.

4. The second respondent contends that the applicant's application lacks merit as he lawfully purchased three acres of the suit land. The money he paid is the same money which was used to buy land where the second wife of the first respondent was settled.

5. I have carefully gone through the applicant's application as well as the opposition to the same by the respondents. The first issue for determination is whether the Environment and Land Court has jurisdiction to entertain the whole matter in the first place. The parties in this application agreed to dispose of the application by way of written submissions.

The applicant's advocate filed his submissions but the respondents did not file their submissions.

6. From the submissions by the applicant's advocate, it is clear that the applicant is basing her claim on

the Matrimonial Property Act of 2013. Under the said act, spouses who are still married cannot bring a case for division of matrimonial property during the subsistence of their marriage. Under section 17 of the matrimonial Property Act 2013, a spouse or former spouse may apply to court for a declaration of rights to any property which is contested between them. The application contemplated in section 17(1) should be made under any law relating to matrimonial causes in accordance with rule as may be prescribed. Matrimonial causes are ordinarily handled by the family division of the High Court . It is therefore my finding that this suit as well as any application thereof should have been filed in the relevant court.

7. However should my finding be wrong, I do not think that the applicant is entitled to any of the orders which she is seeking.

There is no material placed before me upon which I can find that any of her rights have been infringed as to call for restraining orders against the respondents. She has merely alleged that she is the one who bought the property without any evidence to support that allegation.

The second respondent has already taken possession of the three acres which he bought. He cannot be evicted therefrom without the case being heard.

I therefore find that the applicant's application lacks merit. the same is hereby dismissed with costs to the respondents.

It is so ordered.

Dated, signed and delivered at Kitale on this 7th day of March 2016.

E. OBAGA

JUDGE

7/3/2016

In the presence of Mr Bororio for applicant

Court Assistant – Omulindi

E. OBAGA

JUDGE

7/3/2016