



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 39 OF 2020**

**CA.....PLAINTIFF**

**VERSUS**

**JKL.....DEFENDANT**

**RULING**

1. The application dated 26/7/2020 has been brought by the plaintiff. It seeks the following orders:

(1) ...spent

(2) ...spent

(3) That this honourable court be pleased to issue a temporary injunction restraining the respondent/defendant from selling, alienating, charging or in any other way interfering with matrimonial property comprised in Land Title No. WEST POKOT/CHEPKONO/[...] within Lelan South Pokot, pending hearing and determination of this suit.

(4) That the O.C.S. Kabichich police station to effect the order to ensure compliance.

(5) That costs be in the cause.

2. The application has been brought under Sections 1A, 1B, 3, 3A & 63 (c) of the Civil Procedure Act, Order 40 Rules 1, 2, 3 and 4 of the Civil Procedure Rules, The Matrimonial Property Act 2013, Order 51 Rule 1 of the Civil Procedure Rules. It is supported by an affidavit of the applicant dated 16/6/2020.

3. The grounds on which the said application is made are that the applicant and the respondent herein are husband and wife; that during the subsistence of the marriage the parties herein jointly contributed money purchased the land comprised in Land Title No. West Pokot/Chepkono/[...] within Lelan, South Pokot and which property is registered in the name of the respondent; that both parties developed the suit property where they constructed matrimonial home; that the respondent without the consent and knowledge of the applicant intends to secretly sell the suit property; that the respondent has badly dealt with matrimonial property with an intention of evicting the applicant from the suit land by the fact of him marrying the second wife who he wants to occupy the applicant's matrimonial home; that the suit property is in imminent danger of being disposed of and that would render the proceedings herein nugatory.

4. The defendant filed a replying affidavit sworn on 9/7/2020 and a further affidavit sworn on the same date by RCA, the plaintiff's co-wife. The defendant admits that the plaintiff is his wife, being the first wife among four, each with own children, as well as 8 children born out of wedlock; that he has 3 parcels of land including the suit land; that one parcel is at Ywatakale and the plaintiff and the defendant had established their home there with the plaintiff where they also carried on a business with her; that however the plaintiff deserted the defendant in 1980 when the defendant became ill; that his relatives tended to him till he became well; that during the period of desertion the defendant conducted a fundraiser and purchased the suit land; that in 1988 he married his 4<sup>th</sup> wife and established a matrimonial home on the suit land in the plaintiff's absence; that the plaintiff returned to the defendant in 2003 and the two reconciled and the defendant asked her to come and settle on the suit land alongside the defendant's 4<sup>th</sup> wife; that both wives utilize three acres of land each on the suit land parcel as a temporary measure while awaiting the full distribution of the plaintiff's land amongst all his wives and children and while the defendant farms on the rest of it for subsistence; that he has not sold the suit land and he does not intend to evict the defendant therefrom as it is the only property available for distribution amongst the children; that he has not been hostile to the plaintiff as alleged; that he has not been summoned to the police or before the Pokot elders over the matter as alleged.

5. There is also a replying affidavit sworn by one RCA the defendants 4<sup>th</sup> wife. She states in that affidavit that she got married to the defendant in 1988; that her matrimonial home was established on the suit land and now she has 5 children born on the suit land. The rest of the contents of her replying affidavit corroborate what the defendant has stated in his replying affidavit.

6. The applicant filed a further affidavit dated **14/7/2020** in reply to defendant's replying affidavits. She depones that she and the defendant purchased the suit land in **1971** and established their matrimonial home thereon; that there was a business at Ywaleteke but the land there was left to the 3<sup>rd</sup> wife; that she has never wronged or abandoned the defendant and she used to accompany him to Kapsowar Hospital for about 2 years; that she has never left the matrimonial home on the suit land; that she is the person who welcomed the 4<sup>th</sup> wife on the suit land in 1988 when she was married by the defendant; that the 4<sup>th</sup> wife utilizes more than 5 acres of the suit land and the defendant has invaded the plaintiff's 3 acres thus leaving her with less than a quarter of an acre; that the defendant has threatened to sell the land and has, owing to giving him only one child, discriminated against her by building her a grass thatched house while he has built a semi-permanent house for the 4<sup>th</sup> wife; that the defendant sold 7 acres of the suit land as evidence of which she has attached a copy of an agreement dated **1/7/1986** which she claims not to have been involved in; that the defendant demolished her house but agreed to rebuild it after he was arrested by the police. She states that the above matter as well as the defendant's act of giving her a small share of the suit land, are evidence of his intention to evict her out of the suit land.

7. The plaintiff's submissions were filed on **10/7/2020**. She also filed a set of further submissions dated **16/7/2020**. The defendant did not file written submissions on the instant application.

8. The main issue for determination in the instant application is whether the defendant should be enjoined from disposing of the suit land or in any other way interfering with the land which the plaintiff considers matrimonial property pending the hearing and determination of this suit.

9. The defendant does not deny that the plaintiff is his first wife. He disputes the allegation that he has discriminated against the plaintiff. He also denies that he has any intention of either selling the suit land or evicting the plaintiff.

10. In the light of all the averments that the defendant has made in his reply I find that he admits that the plaintiff has some interest in the land as a licensee. His averments may be taken as an undertaking that he will not dispose of the suit land before the conclusion of this suit.

11. In the circumstances I find that the plaintiff has a *prima facie* case and that she would suffer substantial loss as that is the undisputed location of her matrimonial home.

12. I therefore grant the application and I issue a temporary injunction against the defendant restraining him from selling, alienating, charging or in any other way parting with possession of the suit land comprised in **Land Title No. WEST POKOT/CHEPKONO/[...]** or evicting the plaintiff or in any way interfering with the plaintiff's matrimonial home located thereon pending the hearing and determination of this suit.

13. Parties shall comply with **Order 11** of the **Civil Procedure Rules** and this matter shall be mentioned by way of teleconference on **17/9/2020** to confirm such compliance and to issue a hearing date.

**Dated, signed and delivered at Kitale via electronic mail on this 29<sup>th</sup> day of July, 2020.**

**MWANGI NJOROGE**

**JUDGE, ELC, KITALE.**