



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
CIVIL SUIT NO 23 OF 2011 (O.S.)
IN THE MATTER OF THE MATRIMONIAL PROPERTY ACT 2013
AND
IN THE MATTER OF THE LAND REGISTRATION ACT 2012

E M K..... PLAINTIFF

VERSUS

J N M.....DEFENDANT

RULING

1. The Motion dated 17th December 2014 seeks several restraining orders – from being evicted from LR [particulars withheld] registered as [particulars withheld] Karen and from being harassed or abused pending the hearing and disposal of the suit.

The grounds upon which the orders are sought are set out on the face of the application, and the facts are deposed in the affidavit sworn by the applicant on 17th December 2014. The applicant states in the said affidavit that she and the respondent had, during the course of their marriage, acquired property jointly, where she contributed both directly and indirectly. They lived in the property the subject of the application dated 17th December 2014 from 2000 till February 2007 when she moved out on account of violence that was meted on her by the respondent. The respondent himself moved out in 2012 and rented out the property. In August 2014, the parties mutually agreed to have her move back into the house. In December 2014, he forced himself into the compound and threatened to evict her and the children. She fears that she might be evicted.

3. The respondent has responded to the application by his affidavit sworn on an unknown date in 2015. He denies forcing the applicant out of the premises, saying that it was infact the applicant who moved out with the children when the respondent was away. He concedes that after she left he rented out the premises, but adds that he used the rental income to effect renovations on the premises. He states that she forced herself into the premises in 2014 while he was away. He says she had been complaining that rent was high at the place she had relocated to. He denies forcing himself into the property, explaining that he had come back from a mountain climbing expedition only to find himself locked out from the main house and the outhouses. He had to climb over a fence and pitch a tent to reside in. It was after that that the

applicant called the police alleging that she was being threatened and claiming that the respondent had weapons, while all he had was mountain climbing gear. He asserts that the application is founded on false accusations.

4. The parties are in agreement that the property in question was their matrimonial home. The family resided in the said property until the applicant moved out with the children. The circumstances of the moving out are disputed. She then came back with the children; again the circumstances of her coming back are disputed. She has remained in occupation with the children. It would appear that there was an incident at the premises in December 2014. Both sides give conflicting tales about what transpired.

5. The parties have between them a suit by way of Originating Summons for division of matrimonial property. As it is not disputed that the matrimonial home is situated on LR [particulars withheld] (registered as [particulars withheld] Karen, it would only be fair and just that the applicant remains in occupation of the matrimonial home pending the hearing and determination of the main suit.

6. I am convinced from the narratives by both sides on the events of December 2014 that there was an incident. Whatever happened, it is important for both sides to be secure and to live in peace. I believe orders should be made which would help preserve the peace.

7. Taking everything into account, I am moved to make the following orders:-

- a. **That there shall be orders in terms prayers 3 and 5 of the application dated 17th December 2014;**
- b. **That both parties are hereby ordered to live peaceably and to avoid acts that are likely to disrupt peaceful coexistence between them; and**
- c. **That each party shall bear their own costs.**

DATED, SIGNED and DELIVERED at NAIROBI this 3RD DAY OF JUNE, 2016.

W. MUSYOKA

JUDGE