

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MILIMANI AT NAIROBI

**FAMILY
DIVISION**

**CIVIL SUIT
NO. 36 OF
2011**

S W M APPLICANT

VERSUS

J N K RESPONDENT

RULING

1. The application before me is the chamber summons dated 6th July 2011. In it, the applicant, S W M, seeks interlocutory injunctive orders to restrain the respondent, J N K, from alienating or mortgaging the properties known as Plot No.*[particulars withheld]*, also known as L.R. No. Nairobi/ *[particulars withheld]*, at Riverside and Plot No.*[particulars withheld]* said to be part of the *[particulars withheld]* Development Company Limited Scheme on L.R. No.*[particulars withheld]*. The affidavit of the applicant sworn on 6th July 2011 in support of the said chamber summons application reiterates the averments contained in paragraphs 1 to 18 of the applicant's affidavit in support of the originating motion (dated 6th July 2011) which commenced the suit. Neither in the originating motion nor in the chamber summons application is a copy of title to either property referred to is attached. In effect, besides the averment by the applicant that the said properties were acquired by both the applicant and the respondent during the subsistence of their marriage and that they belong to the couple, there is no evidence to show the legal ownership of the said properties.

2. The court cannot issue injunctive orders before it is satisfied that the alleged properties are registered in the name/names of the spouse/s as alleged in the suit. This is especially so where, as here, it seems that plot No.*[particulars withheld]* is comprised in a title to land owned by a limited liability company to wit, *[particulars withheld]* Development Company Ltd, but neither Plot No.*[particulars withheld]* nor Plot *[particulars withheld]* is indicated to be in Nairobi or nor is the location in Kenya where it is situate shown.

3. To facilitate consideration and determination of the application it is necessary for the applicant to furnish the court with documentary evidence relating to the titles to the said properties from which the court can discern who the legal owner/s is/are.

4. For this reason, leave is hereby granted to the applicant to file and serve a further affidavit within 14 days from today for the purpose, and only for the purpose, of furnishing the court with documentary evidence of ownership of the two properties in respect of which injunctive orders are sought. Without evidence as to who owns the properties, the court is placed in the difficult situation by being called upon to give injunctive orders relating to properties whose legal ownership has not been properly established. While the filing of the further affidavit as herein directed is unlikely to occasion prejudice to the respondent, it behoves the court to safeguard the property rights of others who are not privy to the

litigation and to ensure that their property rights are not interfered with without their participation and right to be heard. The respondent shall have 14 days from the date of service of the further affidavit to file and serve, if necessary, an affidavit in further reply.

G.B.M. KARIUKI, SC

JUDGE

Delivered at Milimani Law Courts, Nairobi, on this 6th day of February 2015 by the Honourable Justice W. Musyoka on behalf of Justice G.B.M. Kariuki.

JUDGE

COUNSEL APPEARING

Mr. Leonard Omong'o advocate, of Namada & Co. Advocates for the applicant Mr. E. N. Nganga, Advocate of E. N. Ng'ang'a & Co. Advocates for the respondent

Court Clerk – Mr. Wahinya Kugwa/Korkeche