

REPUBLIC OF KENYA

IN THE HIGH COURT AT MALINDI

DIVORCE CAUSE NO.25 OF 2014

M J K.....PETITIONER

V

P G K..... RESPONDENT

RULING

The application dated 18/12/2014 seeks orders of injunction against the respondent in respect of certain properties that have been described as follows:

- Surveyed and unsurveyed land parcels measuring 12 acres at Kaembeni
- Surveyed and unsurveyed land parcels measuring 13 acres at Mijomboni
- Surveyed and unsurveyed land parcels measuring 12 acres at Tezo
- A plot at Mwenza Ngombe
- Surveyed and unsurveyed land parcels measuring 3 acres at Kibarani
- Surveyed and unsurveyed land parcels measuring 3 acres at Mama Geofrey area in Kilifi and
- Surveyed and unsurveyed land parcels measuring 3 acres at Kiwandani

Parties agreed to determine the application by way of written submissions. The main contention by the applicant is that she facilitated the purchase of those properties. The applicant states that the respondent entered the matrimonial home and harassed her for money and title documents. The respondent has been showing potential buyers to some of the matrimonial properties. She has heavily invested towards the purchase and development of the matrimonial properties.

On his part, the respondent has denied that he intends to sell the properties. He maintains that some of the properties mentioned do not belong to the applicant and that some belong to his family. Under the Matrimonial Property Act, 2013, matrimonial property covers matrimonial home or homes, household goods and any property acquired jointly during the substance of the marriage. The 12 acres at Kilifi Vitengeni is registered in the names of the respondent's father, C M. The 13 acres at Majimboni belongs to the respondent's mother and the petitioner was granted the power of attorney to facilitate the acquisition of funds. The matrimonial house is located on plot no.Kilifi/Mtondia/ **[particulars withheld]** and the title is under the petitioner's name. The only other property is a 3 acre plot known as Kilifi/Kibarani/G.C.Blockv/ **[particulars withheld]** where the respondent has bought his house.

The requirement for grant of orders of injunction are clear. The applicant has to show that he/she has a *prima facie* case with a probability of success. It has to be shown that the applicant will suffer irreparable damage if orders of injunction are not granted. In the event that the court is in doubt then the balance of convenience shall be considered. The application does not annex any title document. This is a divorce matter and the same has not been heard. From the petition and cross-petition, it appear that there is no hope of reconciliation. In his cross petition, the respondent annexed a title deed for plot no.Kilifi/Vitengeni/A/ **[particulars withheld]**. The title is in the name of C M and was issued on 8/8/2013. The respondent also annexed the title deed for plot no.Gede/Mijomboni/ **[particulars withheld]**. It is registered in the name of the petitioner and C S M. The respondent was given power of attorney on 16/7/2014 in respect of that plot. There is plot no.Kilifi/Roka/ **[particulars withheld]** measuring 12.4 acres which is in the name of the respondent.

Given the pleadings herein, I do find that it would be prudent to have the petition and cross petition heard and determined. The court can not injunct the owner of plot no.Kilifi/Vitengeni/A/ **[particulars**

withheld as he is not a party to this suit. With regard to the other properties, I do find that there is need to preserve the properties pending the determination of the divorce course.

In the end, the application dated 18/12/2014 is granted as prayed except plot no.Kilifi/Vitengeni/A/***[particulars withheld]***. Costs shall follow the outcome of the main suit.

Dated, signed and delivered at Malindi this 7th day of July, 2015.

SAID J. CHITEMBWE

JUDGE