



**REPUBLIC OF KENYA**

**HIGH COURT OF KENYA**

**CIVIL SUIT NO. 38 OF 2013 (O.S)**

**AT NAIROBI**

**IN THE MATTER OF MARRIED WOMEN'S PROPERTY ACT, 1882**

**AND**

**IN THE MATTER OF ORDER 37 OF THE CIVIL PROCEDURE RULES LAWS OF KENYA**

**A W W.....APPLICANT**

**VERSUS**

**C N K.....RESPONDENT**

**RULING**

1. The application that I am called upon to determine is a Notice of Motion dated 9<sup>th</sup> July 2013 and taken out under order 40 rules 1 and 2 of the Civil Procedure Rules, section 3 and 3A, section 63 (c) and (e) of the Civil Procedure Act and other enabling provisions of law.
2. The applicant seeks for a temporary injunction to restrain the respondent from interfering with the applicant's quiet enjoyment of, dispossessing or evicting the Applicant from Plots Nos. **[particulars withheld]** and **[particulars withheld]** under share certificates from Mararui Farmers Co. Ltd; and auctioning, selling or disposing of the said plots, as well as Narok/Mutara South Block **[particulars withheld]**, Kabazi/Kabazi Block **[particulars withheld]** Mutathini Nyahururu, Plot No. **[particulars withheld]** Kabati, Kjd/Kitengela/ **[particulars withheld]**, motor vehicles registration numbers **[particulars withheld]** and **[particulars withheld]**, shares in Eveready East Africa Limited, shares in Safaricom Limited, shares in Mumias Sugar Company Limited and shares in Kenya Commercial Bank, pending the hearing and determination of the suit herein. The application is premised on the grounds on the face of the application.
3. The applicant herein, A W W, swore an affidavit on 9<sup>th</sup> July 2013 in support of the application. In that affidavit she has reiterated the grounds on which the application is premised. She states that the parties married under statute and that there are pending proceedings for dissolution of the said marriage. She has attached a copy of marriage certificate and pleadings in the divorce cause. She asserts that the property the subject of the application was acquired during coverture and jointly. She is apprehensive that she may be evicted from the matrimonial home property and dispossessed of the property she is in occupation of, and that the rest of the assets may be sold before the main suit is heard and determined.

4. In opposition to the application, the respondent filed a replying affidavit sworn on 18<sup>th</sup> September 2013, and a supplementary affidavit sworn on 13<sup>th</sup> November 2013, where he has made several averments. Salient among them is the point that the amount of money earned by the applicant was so little that it was for her personal use and could not purchase any property. He contends that he personally paid for the properties using his personal savings and loans, and that the applicant did not make any contributions towards the purchase of the properties.
5. It was directed on 31<sup>st</sup> October 2013, that the application be disposed of by way of written submissions. When this matter came up for mention on 5<sup>th</sup> December, 2013, the court directed the parties to file and exchange written submissions within 30 days, and fixed the matter for mention on 30<sup>th</sup> January, 2014. The applicant complied with the said orders and filed their submissions, the respondent did not file any.
6. Having considered the application, the supporting affidavit, further affidavit, replying affidavit and supplementary affidavit, the submissions by counsel for the applicant, I take the view that the main issue for determination is whether the applicant has made out a case for the grant of an interlocutory injunction.
7. In *Giella vs. Cassman Brown & Co. Ltd* (1973) EA 358, the principles for grant of interlocutory injunctions were laid down as follows:-

‘Firstly, an applicant must show a *prima facie* case with a probability of success. Secondly, whether the applicant might suffer irreparable injury if the injunction is not granted. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.’

8. Has the applicant herein established a *prima facie* case with a probability of success? The applicant has shown that she married the respondent sometime in 1987. The said marriage was in subsistence at the time of the filing of the application, and there is a pending suit for dissolution of the marriage. The respondent has not denied the applicant’s allegation that property the subject of the suit was acquired during the coverture. What the respondent disputes, however, is the allegation that both parties contributed to the acquisition of the same. It is his position that the applicant made no contribution to the said acquisition. The main suit is for a declaration of joint ownership of the said property. Accordingly, I am satisfied that the Applicant has established a *prima facie* case with probability of success and has therefore satisfied the first limb in *Giella vs. Cassman Brown & Co. Ltd*.
9. On whether the applicant will suffer irreparable loss if injunction is not granted, I take note of the fact that the respondent has sold a motor vehicle, **[particulars withheld]**, without the applicant’s consent and the proceeds of sale did not benefit either the applicant or her children. The court has also noted that the applicant and the children live in the matrimonial home erected on Plots Nos. **[particulars withheld]** and **[particulars withheld]**. Further, it has been established that the applicant runs a school on Plot No. **[particulars withheld]** where their daughter is also employed and the income therefrom is used to maintain and educate the children. In view of the foregoing, I hold that the applicant is reasonably apprehensive, and will suffer irreparable loss if the said properties are sold by the respondent.
10. Where would the balance of convenience fall, were this court in doubt? I agree with the submission of learned counsel for the applicant that the balance of convenience tilts in favour of the applicant since the said properties are registered in the name of the respondent. The applicant is not in a position to sell any of the said properties. But the respondent can sell them. As a matter of fact, the applicant has established that the respondent has already sold a motor vehicle without involving her. I hasten to add that the applicant also lives in the Plots Nos. **[particulars withheld]** and **[particulars withheld]** together with the children of the marriage, and runs a school on Plot No. **[particulars withheld]**.

11.I therefore conclude that the applicant has placed before the court sufficient material to warrant a decision in her favour. For the above reasons, I find that the applicant is entitled to an injunction as prayed pending the hearing and determination of the suit. The application is accordingly allowed. Costs of the application shall be in the cause.

**DATED, SIGNED and DELIVERED at NAIROBI this 4th DAY OF September 2014.**

**W. MUSYOKA**

**JUDGE**

**In the presence of Mr. Osoro advocate for the applicant.**