

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 19 OF 2014 (OS)

M N M.....APPLICANT

-VERSUS-

E M K.....RESPONDENT

RULING

1. The Motion for determination is dated 24th March 2014. The applicant seeks injunctive orders to restrain the defendant from alienating property that she alleges to be matrimonial property. She would also like to be restored into one of the properties that she alleges she was forced out of.

2. The suit was commenced by way of an Originating Summons dated 25th March 2014. She seeks orders relating to division of matrimonial property listed in the Originating Summons. She states that the parties married under Kikuyu customary law in 1975 and have five (5) living children. She avers that in 1980 the parties acquired the property known as Loitokitok/Kimana/ *[particulars withheld]* where the matrimonial home is situated. She alleges that she farmed onions on the said farm, the proceeds of which were combined with the respondent's income to acquire Loitokitok/Kimana/ *[particulars withheld]*. Marital differences arose which culminated in her being forced out of the matrimonial home on 6th March 2014. She has attached documents and photographs to support her case.

3. The defendant has replied to the application through his affidavit sworn on 16th April 2014. He acknowledges the marriage between him and the plaintiff. He concedes purchasing land, being Loitokitok/Kimana/ *[particulars withheld]* and *[particulars withheld]* in 1981, respectively. He also acquired Loitokitok/Kimana/ *[particulars withheld]* in 1986. He asserts that he acquired the said assets from his resources and the applicant did not contribute. He says that following certain differences with the plaintiff he was forced to surrender Loitokitok/Kimana/ *[particulars withheld]* to her and to build a house for her. He has attached various documents to his affidavit to support his contention.

4. Counsel of the parties addressed me on 12th June 2014. It is not in dispute that the parties are a married couple. It is also not in dispute that the defendant acquired certain assets during coverture. Whether the plaintiff contributed to the acquisition of the said assets is not a matter for me to decide at this stage. What I should decide at this stage is whether I should make the restraining orders sought or not.

5. I note that the parties are still in matrimony. There is no mention of pending divorce or separation proceedings. The courts have stated in a number of decisions that there is no jurisdiction to make orders for alienation of matrimonial property during coverture. Consequently, there is no jurisdiction to alienate matrimonial property in this case as sought by the plaintiff. It is clear that there is a *prima facie* case with probability of success has not been established.

6. The orders sought in the Motion dated 24th March 2014 are not for granting. The application is without merit. The applicant's remedy lies elsewhere, but not in an application premised on the Matrimonial Property Act 2013. The application is hereby dismissed with costs.

DATED, SIGNED and DELIVERED at NAIROBI this 3rd DAY OF October, 2014.

W. MUSYOKA

JUDGE

In the presence of Mr. Obwayo advocate for the applicant.

In the presence of Mr. Ng'ani advocate for the respondent