



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Suit 35 of 2008

GRACE WAMBUI GACHAUPETITIONER

JOHN GACHAU MUCHIRIRESPONDENT

RULING

Having filed her Originating Summons, under section 17 of the Married Women Property Act 1882 on 5/8/2008, GRACE WAMBUI GACHAU, simultaneously filed this application in which she seeks orders to restrain her husband JOHN GACHAU MUCHIRI, from alienating, transferring, or in any other manner disposing of the 24 properties, which I shall henceforth refer to as 'the subject properties'. It is her prayer that the order if granted, do remain in force until the aforementioned Originating Summons is heard and determined, and on the same token she urges the court to stop any registration or change in the ownership of the said properties, and also that he be restrained permanently from removing any household items from one of the properties, namely, RUIRU/KIU/BLOCK3/1624, which happens to be their matrimonial home.

She relies on the grounds that the respondent is in the process of alienating the subject properties, despite the fact that she is entitled to them by virtue of the fact that they are matrimonial properties, acquired during their marriage, and for which acquisition she made substantial contribution. In her view, his intentions would be tantamount to 'stealing a march'.

Mrs. Wambugu: I emphasize paragraph 6, 7 and 8 of the supporting affidavit which will explain our apprehensions. The applicant stands to suffer irreparable loss. We pray for preservation of the properties so that we do not litigate in vain.

I refer to paragraph 12 of the respondents replying affidavit. He confirms that he does not intend to dispose of any of the properties. Issues raised in his paragraph 4 cannot be urged at this stage.

We have satisfied the conditions obtaining in Geilla's case and we pray for the orders which we seek.

The subject matter is worth Shs.300,000,000/= . We seek declarations for 50% of that value, and the issue of damages cannot thus arise. They have not availed proof in support of his contentions on ownership of the properties.

Mr. Ndegwa We oppose the application and we rely on the replying affidavit of 30th March 2009. He holds some of the properties in trust for his siblings and mother. Some were disposed off long ago. Orders should not be granted, especially in cases of properties which are charged to financial institutions.

In Geilla's case, the principle is clearly laid down, in that he who seeks orders which this applicant seeks must demonstrate that he has a prima facie case with a probability of success; that unless the order is granted, he stands to suffer irreparable loss which cannot be compensated by way of damages. When

the court is in doubt, the balance of convenience will apply.

The applicant has not demonstrated that she will suffer irreparable injury. She can be compensated by way of damages. She seeks a blanket injunction.

The applicant shall have the costs of this application.

He alleges he needs to avail proof that some of the properties are held in trust: or that he obtained funds from his father and siblings to acquire the others, or even, that others have already been disposed of. In my view all this, as well his allegation that she did not contribute at all towards their acquisition or development can only be proven after the matter is heard fully.

She has on the other hand been able to demonstrate that unless the restraining orders are granted, she stands to suffer irreparable loss for which damages would not be an adequate remedy.

Costs shall be in the cause.

Dated and delivered at Nairobi this 3rd day of June 2009.

JEANNE GACHECHE

Judge

Delivered in the presence of:

For the applicant -

For the respondent -