



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

**Civil Suit 20 of 2008**

**ROLEX SABINA JALANGO. .... APPLICANT/PLAINTIFF**

**VERSUS**

**GEORGE JALANGO OTIENO. .... DEFENDANT/RESPONDENT**

**R U L I N G**

The application by Chamber Summons before me is dated 14<sup>th</sup> October, 2008. It seeks inter alia, the following orders: -

- 3) That the Defendant/Respondent be restrained from assaulting, molesting, annoying or otherwise interfering with the Plaintiff pending the hearing and determination of this suit.
- 5) That the Defendant/Respondent be excluded from the matrimonial home in Ongata Rongai being L.R. No. Kajiado/olekasasi/153 pending the hearing and final determination of this suit.
- 6) That the Defendant/Respondent be permanently evicted from the matrimonial home pending the hearing and determination of this case.
- 7/8) That the court make any appropriate orders and orders for costs.

The facts on the record establish that the Plaintiff and Defendant are husband and wife and have children of the marriage. They resided in a matrimonial home being a self-constructed house situate on L.R. No. Kajiado/Ole Kasasi/153, at Ongata Rongai. The property is solely registered in the name of the Plaintiff/Applicant but there is no dispute that it was purchased in the year 2002 during the existence of the parties' marriage. The applicant's assertion is that she bought it with her own finances alone and developed it alone without the assistance of her husband the respondent.

The respondent denies such claim and asserts that while indeed the property is registered solely in the name of the applicant, nevertheless, as purchase was a joint family venture and that he contributed towards its development as well. He points out that even while he was away in the Americas he sent funds to assist construction.

The applicant assigned a lot of importance in the fact that the property is registered in the sole name of the Applicant and she exhibited documentary evidence to the effect that she obtained loans from her bank and/or sacco to enable her to construct the house which is now the matrimonial home, and also the subject of dispute. That was not denied by the respondent who however argued that what the applicant exhibited was only part but of the funds that went into developing the property. That the rest of the funds so needed, came from him. The latter also argued that they own another property in Nairobi which is registered in Joint ownership of the two and that, therefore, the disputed property should also have been

jointly registered although incidentally it was not.

While therefore the applicant insisted that the sole registration excluded the joint ownership with respondent, the respondent argued that applicant was his wife and it did not matter whether any property was registered in one spouse's name since under the matrimonial law of ownership it would still belong to both.

It is not in dispute that the spouses herein presently live in separate homes. The respondent explained the cause of separation as the deliberate act of the applicant. That at no time did he the respondent use any act of violence against the applicant or their children. That the applicant hired people who came to the matrimonial home and forcefully evicted him on 11<sup>th</sup> October, 2008, an occurrence the respondent reported to the police in OB/5712/10/08. That the attackers as a result were arrested and charged with a criminal offence. That later the applicant filed this case and having obtained ex parte interim orders, has the Respondent summoned to Ongata Rongai Police Station. That on 10<sup>th</sup> November, 2008 the respondent successfully prevented the applicant from taking away from the house household goods which however she took away on 11<sup>th</sup> November, 2009 while the respondent was held in the Police Station. That the applicant took even the children and has never returned home.

The Respondent accordingly asserted that he never took part to chase the applicant way or threaten her violence. He stated that if the applicant stays away from the matrimonial home, it is simply her voluntary choice to do so.

Furthermore the Applicant argued that since she was ousted from the matrimonial house, she lives in a rented house in respect of which she pays a monthly rent of Kshs.25,000.00. That her children live with her there and suffer while the Respondent lives in the matrimonial house without a requirement to pay rent. And yet the house belongs to her, the applicant asserts. The applicant asserts finally that she was forced out of the matrimonial home by the Respondent who threatened violence to her and to the children.

In further reply the Respondent states that the criminal charges that he faces in court were instigated by the applicant herself with a view to oust the Respondent from the home. He states that he came home from the Police Station at Ongata Rongai to find that the Applicant had on her own volition and with unknown intention moved out. To some unknown place. That in those circumstances he cannot be held responsible.

The Respondent further argued that he was not responsible for the applicant's and children's stay out there. Nor was he responsible to the fact that applicant pays monthly rent.

Mr. Aduda for Respondent also gave some legal reasons why he thought the injunctions sought should not be granted. He said that the case before the court was initiated by Plaintiff when it should have been started by Petition, if it is divorce and Originating Summons if it is a division of matrimonial property. Furthermore and even worse, the plaintiff seeking divorce is not signed by the Petitioner as required by law but is instead signed by his advocate.

The Respondent's argument therefore is that the suit stands to be struck out and that therefore, it is not adequate structure under which the court can issue lawful injunction orders. The Respondent also points out that the Plaintiff is due for striking out as well because it is not backed by a verifying affidavit. It cannot therefore house any lawful injunction orders, since it is bad in law, argued the Respondent.

Finally the Respondent also argues that even if the suit were proper, nevertheless the application seeks some mandatory order to evict the Respondent from the applicant. That requires special circumstances to justify such orders and yet he argues, applicant has not demonstrated that this is a clear, plain and obvious case.

I have carefully perused the affidavits supporting and opposing this application. I have also of necessity perused the pleadings of either party. It is not denied by both sides that the parties herein are married, have children from the marriage and have not been divorced. However, this is not a suit for

division of matrimonial property under section 17 of Married Women Property Act. If it were, this court could be prepared to anticipate the examination of the conditions under which the property herein was acquired with a view to decide if and how the same should be divided between the spouses herein.

On the other hand what appears before the court for the purpose of deciding the issue of whether or not to grant injunctions is the fact that the property in question is registered in the sole name of the applicant/plaintiff. Prima facie, therefore, the property is solely hers until shown otherwise by evidence during the hearing.

Furthermore, the Respondent does not deny the fact that while the other property at Koma Rock is jointly registered with his wife, this one in dispute is not. As I have already said, the Respondent may get an opportunity to explain why the property in question is registered solely in the Applicant's name. Until then, the property belongs to her.

The above conclusion is in tandem with the fact that the Respondent spent a substantial portion or portions of her salaries for a long period to develop the property.

Finally, the Respondent admits that the development was done majorly in a period he was absent from the matrimonial home, either away in England or during the four years he deserted the Applicant.

It is also in the affidavit evidence that the Respondent took possession of the premises on L. R. No. Kajiado/Ole Kasasi/153 when the applicant was away in Dubai and after a four year stint of desertion. Whether he threw the custodians of the premises out or they took off when they saw him is not here nor there. What is clear and is admitted by the Respondent is that he was an angry man when he returned home and got the impression that his wife the Applicant was having an affair with another man. He confirms that he could not stand it.

It is not strange in the above circumstances, that the applicant was scared of what the Respondent was capable of doing. She alleges that the Respondent threatened her with death or bodily harm when she returned from Dubai towards October to November, 2008. This court is prepared on the face of things and subject to proper proof that what the Applicant alleges about threats and safety might be true.

The court is not oblivious of the fact that the pleadings might not be perfect or proper at this stage. However, the court presently is not concerned with proof of the pleadings. It is not in trial of the suit yet and the right to amend pleadings has not gone yet. What presently is the issue is whether or not the applicant is entitled to injunctions until the suit is heard and decided one way or the other.

The Respondent argued that some of the prayers raise the issue of mandatory injunction. The court agrees but adds that there is prima facie evidence on the record to show that the applicant requires security and protection until the suit is heard. Such security and protection will only be availed if the Respondent is ordered out from the matrimonial premises which on the face of the prima facie evidence on record, appear to belong solely to her.

It is important to also note that the applicant is now forced to pay a monthly rent of Kshs.25,000/- in order to secure accommodation for herself and the couple's children. And yet she has spent almost all her life's savings to construct a house which is now being occupied by the Respondent whose contribution thereto is only yet to be proved.

In my view the evidence of ownership and development of L.R. No. Kajiado/Ole Kasasi/153 on this record is sufficient to prove prima facie that she is entitled to its possession and occupation to the exclusion of the Respondent until the suit is decided. There is evidence as well to support exceptional circumstances in favour of the applicant. And finally the balance of convenience is in the side of her getting occupation and possession by excluding the Respondent in the meantime.

The final orders will therefore be that prayers 4, 5, 6 and 8 of the Chamber Summons dated 14<sup>th</sup> October, 2008 are granted as prayed. OCS, Ongata Rongai Police Station is hereby instructed to assist in

effecting this order immediately. Orders accordingly.

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

**D A ONYANCHA**

**JUDGE**