

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1489 OF 1997

AGNES WANJIKU MBUGUA.....PLAINTIFF

VERSUS

JAMES MBUGUA MACHARIA.....DEFENDANT

R U L I N G

This is an application by way of Chamber Summons under Order 39 Rule 1(a) of the Civil procedure Rules and section 3A of the Civil procedure act for an injunction to be issued restraining the respondent from disposing off or in any other manner whatsoever wasting and or alienating the movable and immovable property set out pending the determination of these proceedings.

The application is supported by an affidavit sworn by the applicant to which the respondent has sworn a replying affidavit. Both learned counsel have also made their submissions which I have on record.

For the applicant to succeed in obtaining the order sought, it has to be proved by affidavit or otherwise that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree.

In the instant application the applicant has stated in her affidavit paragraphs 5 and 6 thus:-

“5. The aforesaid properties are registered solely in the name of the respondent and are exclusively in his possession.

6. That I verily believe that unless restrained by this Honourable court, the respondent will dispose, alienate or waste the aforesaid movable and immovable property with a view to defeating my claim herein.”

The applicant’s substantive suit is by way of Originating Summons grounded on Section 17 of the married Women’s Property Act, (1882). Directions are yet to be taken. It is true that marriage has not been denied. However, the principles of granting injunctions are applicable here like in all other cases seeking the same orders. In the instant case the guide is to be found in order 39 Rule 1(a) which has been cited by the applicant.

As “status quo” is not a rule per se, the applicant is duty bound to provide evidence as required by that provision. In one of the cited cases- H.C.C.C. No. 1246 of 1996 - Margaret Gitau -v- Joseph Gitau, Mbitio J. observed that there was some evidence that the assets were likely to be disposed of. He then ordered that the status quo be maintained. In the instant case the applicant has not provided any evidence to that effect and her fears as contained in her affidavit fall short of that.

Accordingly the application must fail. The same is hereby dismissed with costs. Order accordingly.

Dated and delivered at Nairobi this 20th day of May, 1998

A. MBOGHOLI MSAGHA

JUDGE