

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NYERI

(CORAM: GICHERU, KWACH & PALL, JJ.A.)

CIVIL APPLICATION NO. NAI. 85 OF 1997

BETWEEN

ALICE KARURU KITHINJI APPLICANT

AND

GIDEON KITHINJI LIMBERIA RESPONDENT

(Application for inhibition and restriction /caveat, pending appeal against the ruling and orders of the High Court of Kenya at Meru (Justice Etyang) dated 12th March, 1997 in

H.C.C.C. NO. 2 OF 1997)

RULING OF THE COURT

This is an application under rule 5(2)(b) of the Court of Appeal Rules for an inhibition order and caveats over 11 properties owned by the respondent pending the hearing and final determination of an appeal by the applicant (a wife) against her husband, the respondent, in this application. The applicant sought the same order in the superior court but her application was unsuccessful. Although the cause of action is based on trust the claim may well succeed as the parties are husband and wife. In order not to inhibit the respondent from exercising his proprietary right as registered owner completely, and also to give the wife a measure of protection, we allow the application and grant an order of inhibition over the commercial property L.R. NO. NTIMA/IGOKI/513 in terms of prayer (1) in the Notice of Motion until the hearing and final determination of the intended appeal or further order.

Costs of the application to be in the intended appeal.

Dated and delivered at Nyeri this 15th day of May, 1997.

J.E. GICHERU

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JUDGE OF APPEAL

R.O. KWACH

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JUDGE OF APPEAL

G.S. PALL

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR