



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 31 OF 2019

LOIS CHEPKOPUS LOMUR.....PLAINTIFF

VERSUS

WILLIAM LOMUR MALER.....DEFENDANT

RULING

1. The application dated **9/4/2019** and filed in court on the same date has been brought by the plaintiff. It seeks an order of temporary injunction to restrain the defendant from selling, alienating, charging or in any other way interfering with matrimonial property comprised in **Plot K7 Makutano Township**, pending hearing and determination of this application and pending hearing and determination of the main suit. He also prays for costs.
2. The applicant has brought the application pursuant to **Order 1A, 1B, 3, 3A and 63 (c)** of the **Civil Procedure Act and Order 40 Rules 1, 2, 3 and 4 of the Civil Procedure Rules and Section 13 (7) (a) of the Environment and Land Court Act, 2011**.
3. The grounds on which the said application is made are that the applicant and respondent herein are husband and wife; that during the subsistence of the marriage the parties herein jointly contributed money, purchased the land comprised in **K7 Makutano Township** and which property is in the name of the respondent; both the applicant and respondent developed the suit property where they constructed rental houses; that the respondent herein without the consent and knowledge of the applicant intends to secretly sell the suit property; the respondent has badly dealt with other matrimonial properties forcing the applicant to lodge a caution on this one owing to the fact that the same is not registered and that the suit property is in eminent danger of being disposed of and that would render the proceedings herein useless.
4. The application is supported an affidavit of the 1st plaintiff dated **9/4/2019** which lays emphasis on the above grounds.
5. In reply to the application the defendant filed a sworn replying affidavit on **13/5/2019**. In that affidavit he states that the suit land was never jointly acquired and that he purchased the suit land which he allowed the plaintiff to use. He also avers that **West Pokot Siyoi "A"/4369** is their matrimonial home and the plaintiff and her children are resident thereon. He denies allegations that he intend to dispose of the suit property and terms the occupants thereon as mere tenants; that plot **K7** is not matrimonial property and that Pokot Council of Elders have no jurisdiction to hear and determine any dispute relating to the suit land.
6. The plaintiff filed a further affidavit on **14/6/2019** in which she reiterated that the suit land is matrimonial property and accused the defendant of preventing her from obtaining any rent from the premises. In that affidavit she also conceded to the defendant's claim that their matrimonial home is on Plot No. **4369** and termed Plot **K7** as part of their matrimonial property. She further maintained that the defendant is barring her from utilizing the suit property because he wants to sell the same. She accused the defendant of having some land registered in his name jointly with other children whom she did not know. She averred that the defendant has other properties and annexed two certificates of official search for plots Nos. **West Pokot/Siyoi 'A'/4371** and **West Pokot/Chepkono/112** both of which reflect the defendant as absolute proprietor.
7. The defendant filed submissions on **2/7/2019** while the plaintiff on **18/7/2019**. I have considered the application and the response including the plaintiff's submissions.
8. The bone of contention in this application is whether the defendant should be restrained by way of temporary injunction from interfering with a plot known Plot **K7 Makutano** which the plaintiff claims falls under the category of matrimonial property.
9. It is not denied that the plaintiff and defendant are husband and wife or that they got married in 1971 under the African Christian Marriage and Divorce Act.
10. What the defendant contends is that the plaintiff was not involved in the purchase of some of the suit properties and that plot **K7** is not matrimonial property within the meaning of **Section 6(1)** of the Matrimonial Property Act 2013.

11. Having admitted that he owns Plot **K7** what remains of this court is to ascertain whether that plot is a matrimonial property as claimed by the plaintiff and that is a matter of evidence that cannot be established at this interlocutory juncture.

12. I find it odd that the plaintiff would focus on only one property in this suit amongst many others but I concede that the reason is that she wishes to safeguard it from any sale to which she has not consented. The main prayer in the plaint is for a declaration that plot **K7** and the developments standing thereon is matrimonial property and that it vests in both the defendant and the plaintiff.

13. The issue of whether the plot was jointly acquired and jointly developed cannot be determined at this stage. Owing to the wealth of material furnished by the parties it is clear that much evidence will be expected at the hearing regarding that issue.

14. This court cannot state at the moment that the plaintiff has established a prima facie case. However in the event that I am wrong, any sale or other disposal of this suit property during the pendency of this suit may occasion the plaintiff untold loss if it turns out that she was entitled to a share of the plot in question.

15. In the circumstances I find it not proper to leave the suit property exposed to any disposal by the defendant while this suit is pending for the reason that such a sale would render this suit nugatory.

16. In view of the doubts expressed by this court above it is necessary to rule on the application dated **9/4/2019** on a balance of convenience, and the balance of convenience in this case lies in preserving the suit property pending the hearing and determination of the suit.

17. Consequently I grant **prayer No. 2** of the application dated **9/4/2019**.

Dated, signed and delivered at Kitale on this 30th day of July, 2019.

MWANGI NJOROGE

JUDGE

30/7/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Collins

Mr. Nyamu holding brief from Munialo for plaintiff

N/A for the defendant

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

30/7/2019