



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 24 OF 2018 (O.S)**

**D K ..... APPLICANT**

**VERSUS**

**J A W ..... 1<sup>ST</sup> RESPONDENT**

**V W K ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. In the Application dated 6<sup>th</sup> February, 2018, the Applicant is seeking for the following orders:

***a. A temporary order of injunction to issue restraining the Respondents from constructing, developing or in any other manner interfering with the land parcel No. Kangundo/Mbilini/[particulars withheld] comprising the matrimonial home pending hearing and determination of the suit herein.***

***b. That costs be borne by the Respondents in any event.***

2. The Application is premised on the grounds that the Applicant and the Respondent got married in the year 1998 under the African Christian Marriage and Divorce Act and that during the subsistence of the marriage, they jointly acquired parcel of land known as Kangundo/Mbilini/[particulars withheld] (*matrimonial home*); Kangundo/Kawethei/ /[particulars withheld]; Matungulu/Sengani//[particulars withheld]; Kangundo/Mbilini//[particulars withheld] and Komarock Housing Co-operation CS No. /[particulars withheld].

3. According to the Applicant, parcel of land known as Kangundo/Mbilini//[particulars withheld] (*the suit land*) is part of the ancestral land and that the same was registered in the name of the Respondent but held in trust for the Applicant and in equal share; that the Respondent deserted the matrimonial home on 9<sup>th</sup> December, 2017 and purported to marry V W K and that he has commenced to construct another house on the suit land.

4. In response, the 1<sup>st</sup> Respondent deponed that he is not married to the 2<sup>nd</sup> Respondent; that the suit land is registered in the name of D W N (*deceased*) who is his late grandfather; that his late grandfather also owned parcel of land known as Kangundo/Mbilini/ /[particulars withheld] which he was gifted and that the matrimonial home is situated on plot number /[particulars withheld].

5. According to the 1<sup>st</sup> Respondent, he purchased the suit land from his uncle out of his share of inheritance and that he put up a new house on the said land in the year 2015; that he moved out of the house due to the differences he had with the Applicant and that he is constructing a house on a portion of the suit land that he was gifted by his late brother.

6. Both the Plaintiff's and the Defendants' advocates filed written submissions and authorities which I have considered.

7. The evidence before me shows that a parcel of land known as Kangundo/Mbilini//[particulars withheld] is registered in the name of D W N, the 1<sup>st</sup> Respondent's grandfather. According to the 1<sup>st</sup> Respondent, he purchased a portion of the suit land, which is his ancestral land, from his uncle. He then put up a matrimonial home on a portion of the land and has put up another house on the same land.

8. Although the Applicant pleaded that the land is registered in the name of the 1<sup>st</sup> Respondent, that is not true. Indeed, the Respondents are non-suited in view of the fact that the suit land is not registered in their names.

9. Furthermore, there is no evidence to show that the 1<sup>st</sup> Respondent has interfered with the possession of the suit land. All that the 1<sup>st</sup> Respondent intends to do is to put up a house on a portion of the suit land. I do not see why I should injunct the 1<sup>st</sup> Respondent from doing so. It is only the legal administrator of the Estate of the late D W N that can seek such an order.

10. In the circumstances, I find that the Applicant has not established a case with prima facie chances of success. I therefore dismiss the Application dated 6<sup>th</sup> February, 2018 with costs.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 20<sup>TH</sup> DAY OF JULY, 2018.**

**O.A. ANGOTE**

**JUDGE**