



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 452 OF 2017

CMM PLAINTIFF

VERSUS

FMW DEFENDANT

RULING

1. What is before me is the Application dated 14th November, 2017 seeking for the following orders:

a. That a temporary order of an injunction be issued against the Defendant/Respondent restraining him, his agents and/or servants from selling, transferring, alienating, interfering, damaging and/or carrying out any works howsoever in the suit Parcel No. Katheka-Kai Block [xxxx] pending inter-partes hearing and determination of this Application.

b. That the Defendant himself, his agents, servants or howsoever be restrained from selling, transferring, alienating, damaging, interfering and/or carrying out any works howsoever in the suit land pending hearing and determination of the suit.

2. The Application is premised on the grounds that the Plaintiff is jointly registered as the owner of Plot Number Katheka-Kai Block [xxxx](the suit land); that the Plaintiff has put up and built a permanent residential home on the land and that the Defendant has been attempting to sell the said land.

3. In her Affidavit, the Plaintiff deponed that they contributed equally with the Defendant for the purchase of the suit land; that she single handedly developed three (3) bedroomed residential houses on the land and that she is apprehensive the Defendant may sell the house.

4. According to the Plaintiff, she borrowed Kshs. 800,000 which she used to develop the suit land and that she is willing to refund the Defendant his share of the purchase price of the land.

5. In reply, the Defendant deponed that he cohabited with the Plaintiff for more than nine (9) years; that he bought the house using his funds; that he contributed more funds to acquire and develop the suit land and that he is still paying for the loan that he took to develop the suit land.

6. It was the deposition of the Defendant that he has no intention of selling the suit land and that this court does not have the requisite jurisdiction to deal with the issue of division of matrimonial property.

7. The Plaintiff's counsel submitted that although the suit land was purchased jointly by the Plaintiff and the Defendant, the Defendant did not contribute towards the development of the house; that the primary concern of granting an injunction is to maintain the *status quo* of the property and that being a registered owner of the land, the Plaintiff has an interest in the land.

8. The Defendant's advocate submitted that the Defendant is not in a position to waste or alienate the suit land; that the subject matter is a matrimonial property and that this court does not have the requisite jurisdiction to deal with the suit.

9. The Agreement annexed on the Plaintiff's Supporting Affidavit shows that both the Plaintiff and the Defendant purchased the suit land from one Benjamin N. Musewa for Kshs. 600,000. According to the records of Katheka-Kai **Farmers' Cooperative Society** Limited, the suit land is jointly registered in the names of the two.

10. Both the Plaintiff and the Defendant have deponed on how they individually developed the suit land. Considering the rival arguments of the extent of contribution towards the development of the suit land, that issue can only be determined conclusively after trial. Although the Defendant has deponed that the suit land is matrimonial property as defined under Section 6 of the Matrimonial Property Act, the Plaintiff has disputed the Defendant's assertion that they were ever married. This court cannot therefore, at this stage, determine if indeed the suit land is matrimonial property or not.

11. Suffice it to say that being a property jointly registered in the names of the Plaintiff and the Defendant, both parties have a legitimate interest in the land. Consequently, the most appropriate order to grant in the circumstances is the maintenance of the prevailing *status quo* pending the hearing and determination of the suit, including the issue of whether this court has jurisdiction to deal with the dispute.

12. For those reasons, I make the following specific orders:

a. The prevailing status quo to be maintained pending the hearing and determination of the suit.

b. Each party to pay for his/her costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 28TH DAY OF SEPTEMBER, 2018.

O.A. ANGOTE

JUDGE