



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CIVIL SUIT NO. 38 OF 2015

LUCIA MWELU PIUS MBUVI.....APPLICANT

VERSUS

TITUS MULINGE MWANGANGI.....1ST RESPONDENT

DENNIS MUNEN.....2ND RESPONDENT

AND

DEMSA TRAVEL SOLUTIONS LTD.....INTERESTED PARTY

RULING

1. In the Application dated 12th February, 2015, the Applicant is seeking for the following orders:

a. That the 1st Respondent his agents, servants, assigns and or personal representatives be restrained by an order of temporary injunction from wrongfully and illegally alienating, wasting, damaging purporting to sell or transfer by unlawful private treaty or public auction and/or dealing in any way disposing off all that property known as Land Reference No. 12715/6900, original Number 12715/328/27 title number 1 R 111873 situated in Northwest Athi River (Syokimau) Machakos County pending the hearing and determination of this Application, suit and/or any other or further court orders or directions.

b. That it be ordered that 2nd Respondent be and is hereby evicted from the said property known as LR. 12715/6900 original number 12715/328/27 situated in Northwest Athi River Machakos County.

2. The Application is supported by the Affidavit of the Applicant who has deponed that she was married to the 1st Respondent on 25th June, 1997; that in the year 2009, they purchased L.R. 12715/6900 (*the suit property*) with the intention of building their matrimonial home and that the 1st Respondent insisted that the title document should be in his name, a proposal that she did not object.

3. It is the deposition of the Applicant that they completed building their house on the suit property in the year 2009; that they lived in the said house until the year 2014 when the 1st Respondent informed her that he wanted to sell the house and that the 2nd Respondent is now in occupation of the suit property.

4. In his Replying Affidavit, the 1st Respondent deponed that the Plaintiff is his wife; that the suit property was their commercial residential house where they lived as a family from the year 2009 up to

2014 when he sold it to the 1st Respondent with the consent of the Plaintiff and that they agreed to utilize the proceeds from the said sale to develop their matrimonial home in Machakos.

5. It is the 1st Respondent's case that their matrimonial home has always been in Machakos; that the Plaintiff moved out of the house voluntarily and that he gave to the 1st Respondent vacant possession of the house after receiving the purchase price.

6. The 1st Respondent deponed that he does not have the proprietary interest any more in the suit property.

7. The 2nd Respondent deponed that he is in occupation of the suit property; that he was present when the Plaintiff and the 1st Defendant moved out of the house and that the Applicant cannot seek for orders to evict him from the house.

8. The Applicant's counsel submitted that pursuant to Article 45(3) of the Constitution, parties to a marriage are entitled to equal rights at the time of marriage, during the marriage and after the marriage.

9. The Applicant's counsel submitted that the suit property is a matrimonial property as defined by the Matrimonial Property Act and that the suit property was acquired during the subsistence of the marriage.

10. The Applicant's advocate submitted that the purported purchasers should not be allowed to keep what they have taken with the full knowledge that it was a matrimonial property.

11. The 1st Respondent's advocate submitted that the Plaintiff was all along aware of the sale of the suit property; that he is the one who lives with the children and that the Application should be dismissed.

12. In the Originating Summons dated 12th February, 2015, the Applicant is seeking for a declaration that the suit property is held jointly between her and the 1st Respondent.

13. The suit has been filed pursuant to the provisions of the Matrimonial Properties Act 2013.

14. Section 6 of the Act has defined a matrimonial home to mean: the matrimonial home or homes, household goods and effects in the matrimonial home(s) or any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.

15. Section 7 of the Act provides that ownership of matrimonial property vests in the spouses according to contribution of either spouse towards its acquisition, and shall be divided between the spouses if they divorce or their marriage is otherwise dissolved.

16. It is not in dispute that the suit property was acquired during the subsistence of the marriage between the Applicant and the Respondent. It is also not in dispute that the suit property was registered in favour of the 1st Respondent.

17. The Applicant's claim is that she participated in the acquisition of the suit land, and that she was not aware that the 1st Respondent was selling the land to the 2nd Respondent.

18. The issue of whether the Applicant consented to the sell of the suit property or whether she contributed towards its acquisition can only be dealt with at trial.

19. In the meantime, and before the question of whether the Applicant is entitled to a share of the suit property can be determined, the suit property should be retained in the state that it is in now.

20. However, considering that the 2nd Respondent has paid to the 1st Respondent the full purchase price for the house, it will be inequitable to order him out of the house at this stage.

21. It is for those reasons that I allow the Application dated 12th February, 2015 in terms of prayer number 2 alone.

22. For avoidance of doubt, the 2nd Defendant shall continue occupying the suit property pending the hearing and determination of the suit.

DATED AND DELIVERED AT MACHAKOS THIS 17TH DAY OF MARCH, 2017.

OSCAR A. ANGOTE

JUDGE