



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MOMBASA
CIVIL SUIT NO .87 OF 2016

ASMAHAN RAHAMI RAHAMTULLA.....PLANTIIF

VERSUS

1. COMTRADE ENTERPRISES LTD

2. SALIM YUSUF MWAHIUNDE

3. ATHMAN AHMED ABDALLA

4. GEORGE KURIA MAINA

5. JAMES MWANGI MAINA

6. MARGARET WANJIRU MWANIKI

7. ARVIND KUAR LALJI

8. RAHAMTULA RAHMI AHMED

9. LANG REGISTRAR MOMBASA.....DEFENDANTS

RULING

1. The application for determination is dated 13th April 2016 and is brought under the provisions of order 40 Rules 1 and 2, Order 51 of the Civil Procedure Rules and Sections 1A, 1B and 3A of the Civil Procedure Act. The Plaintiff seeks the following orders:

1) Spent

2) Spent

3) That the Honourable Court do issue a permanent injunction restraining the defendants/respondents either by themselves, agents or employees or any other person acting through them from claiming an interest from the respondents from selling, medaling, trespassing, transferring, construction, continuing to construct, medaling or in any manner whatsoever in dealing with the parcel of land known as CR.NO.32208 pending hearing and determination of this suit.

4) That the Honourable Court do issue further interim Order directing the Land Registrar Mombasa to stay/restrict and/or prohibit any other further dealing, sub-division or registration of instrument over the parcel of land being CR.NO.3220 pending the hearing and determination of this Application.

5) That the O.C.S. Nyali Police Station do ensure compliance of the said Orders.

6) That costs of this Application be provided for.

2. The Application is made based on the grounds on the face of it and is supported by the Affidavit of Ashmahan Rahami Rahmtulla, the Plaintiff sworn on 13th April 2016. The Plaintiff states that she is the legal and bona fide wife of Rahmtualla Ahmed Rahami with whom they celebrated their marriage on 4th March 1989 under Muslim Sharia Law. Although the Applicant refers to the said Rahamtula Rahim Ahmed as the 9th defendant, he is listed in the pleadings as the 8th defendant and I shall henceforth refer to him as the 8th defendant. The plaintiff depones that during the subsistence of the said marriage, they jointly acquired the suit property in which they built their matrimonial home. The plaintiff further states that she was utterly shocked when she learnt that the 8th defendant, without her consent, is sub-dividing, transferring and colluding with unsuspecting members of the public and the defendants to sell the said matrimonial property. It is the plaintiff's contention that the said actions by the defendants are unlawful and should be cancelled. The plaintiff avers that being the legal, legitimate and bona fide wife of the 8th defendant, she has a legal claim in the suit property. The plaintiff further states that she is being threatened with forceful eviction from her matrimonial home and stands to suffer irreparable loss and damage unless the orders sought are granted. The applicant has attached to her affidavit a copy of their certificate of marriage and the certificate of title showing some transfers.

3. The Application was opposed by the 1st to 8th defendants. In opposing the Motion, the 1st to 5th, 7th and 8th defendants filed a Replying Affidavit sworn by Rahamtulla Rahimi Ahamedi the 8th defendant on 13th June 2016. In his Replying Affidavit, the 8th defendant states that the suit property was part of his property of the estate of his late father, Ahmed Rahami which was sold by the heirs of the deceased to the 1st to 7th defendants to offset the deceased's debts and to clear outstanding rates. The 8th defendant admits that the plaintiff was his legal wife but avers that their marriage was dissolved in April 2016. He further depones that their matrimonial home where the plaintiff resides is situated at Kibokoni, Mombasa Island while the suit property is situate at Kongowea, Mainland North. He has attached copies of the certificate of title and Judgment and order in **SUCCESSION CAUSE NO.108 OF 2014** in respect to the estate of **AHMED RAHAMI (DECEASED)** as well as a letter of authority from the other defendants. They denied the plaintiff's allegations.

4. The application was also opposed by the 6th defendant who filed a Replying Affidavit sworn on 2nd June 2016. The 6th defendant states that she bought a portion of the suit property from the 8th defendant and that the plaintiff gave her spousal consent. She has attached an affidavit allegedly signed by the plaintiff. The 6th defendant further states that she has since sold the said land and no longer has any interest in it.

5. I have carefully considered the Motion and this being an Application for temporary injunction, the plaintiff must show that she has satisfied the conditions laid down in the case of **GIELLA –VS- CASSMAN BROWN**. The plaintiff must show that she has a prima facie case with probability of success, that she stands to suffer irreparable damage, and in the event of doubt, the balance of convenience lies with her.

6. The Certificate of Title for the suit property which was attached to the plaintiff's Supporting Affidavit as well as the Replying Affidavit of the 8th defendant is in the name of Ahmed Rahami and the same was subject of succession **CAUSE NO.108 OF 2014**, In the matter of the estate of **AHMED RAHAMI (DECEASED)**. It is clear that pursuant to the judgment and order in the said succession cause, the suit property was registered in the name of the 8th defendant and others. There is no allegation made that the

succession proceedings that led to sub-division and distribution was unlawful. The 8th defendant has also deponed that the plaintiff is residing in their matrimonial home situate in a property different from the suit property. This averment has not been disputed. The defendants have demonstrated that they acquired a genuine interest in the suit property through an open and lawful process. It has been shown that the suit property was the subject of a court process with no objections.

7. Having considered the plaintiff's application together with the affidavits in support and against as well as the submissions made, I am not satisfied on the material before me that the plaintiff has established a prima facie case against the defendants with a probability of success. On whether or not the applicant would suffer irreparable harm if the orders sought are not granted, I take the view that the value of the property is known and can be quantified in damages. As for the balance of convenience, I take the view that the same tilts in favour of the defendants who are in occupation of the suit property.

8. The upshot of the foregoing is that the plaintiff's Notice of Motion dated 13th April 2016 lacks merit and the same is hereby dismissed with costs to the respondents.

Delivered, dated and signed at Mombasa this 30th day of June, 2017.

C. YANO

JUDGE