



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 131 OF 2015

JOSHUA MUTUA KITHUMAAPPLICANT

VERSUS

ANGELINA MUTHEU MUTUARESPONDENT

RULING

1. Together with the Plaint, the Plaintiff filed an Application dated 27th April, 2015 in which he is seeking for the following orders:

a. That pending the hearing and final determination of the suit herein the Defendant be restrained either by herself or her agent from entering and collecting rent from Yatta B2/Kwa Vonza/930 and denying and/or preventing the use of the motor vehicle Registration number KAS 093V.

2. The Application is premised on the ground that the Applicant is the registered owner of parcel of land known as Yatta B2/Kwa Vonza/930 and therefore entitled to the rent; that the Applicant is the registered owner of the lorry registration number KAS 093V which he uses in his day to day business and that the Defendant has physically and forcefully obstructed the Applicant from using those items.

3. In response, the Defendant deponed that during the pendency of their marriage, the two of them acquired several properties; that she has been using the proceeds from the said property for her own sustenance and for sustenance of their children and that there is currently a matrimonial suit in HCCC no. 24 of 2015 involving matrimonial properties.

4. In his submissions, the Plaintiff's advocate submitted that the Respondent has been frustrating the Applicant's financial efforts to obey the maintenance order; that the Applicant has been financially supporting his children and that he has a prima facie case with chances of success.

5. In response, the Defendant's advocate submitted that the suit land was acquired jointly by the Plaintiff and the Defendant; that the Defendant has been on the property operating her business and that the Plaintiff has not demonstrated a prima facie case with chances of success.

6. It is not dispute that the Plaintiff is the registered proprietor of parcel of land known as Yatta B2/Kwa Vonza/930.

7. It would appear that the Plaintiff and the Defendant once lived together as husband and wife. However, the two of them separated and a matrimonial cause being Nairobi HCCC No. 49 of 2014 for the distribution of matrimonial properties was filed. That suit is still pending.

8. The Defendant has not denied that the suit land has been rented out. Indeed, the Defendant admitted as much in her Replying Affidavit when she stated as follows:

“I have been using the proceeds from the said properties for my own sustenance and for the substance of our children.”

9. The Defendant has also not denied that the Plaintiff has been providing for the children of the marriage as ordered by court in Nairobi Children’s Court Case No. 497 of 2014.

10. Considering that the issue of division for matrimonial property is still pending, and in view of the order of the Children’s Court that the Plaintiff should provide school fees and related expenses for the three children of the marriage, the Plaintiff has shown that he has a prima facie case with chances of success.

11. Indeed, unless the Plaintiff is allowed to collect rent from the suit land, he will be unable to comply with the order of the Children’s Court. Considering that the Defendant does not live with the children of the marriage in the suit land, and in view of the fact that the suit property is registered in favour of the Plaintiff, the Plaintiff shall suffer irreparably unless the injunctive order is allowed.

12. For those reasons, I shall allow the Application dated 27th April, 2014 only in so far as the collection of the rent is concerned. This court does not have the requisite jurisdiction to delve into the issue of ownership of the motor vehicle (s).

13. I therefore allow the Application dated 27th April, 2014 as follows:

a. Pending the hearing and determination of the suit, the Plaintiff or his agent to collect rent from parcel of land known as Yatta B2/Kwa Vonza/930.

b. The Plaintiff should not sell, transfer, charge or alienate the suit land pending the hearing of the suit or until further orders of this court are granted.

c. Each party to bear his/her costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 22ND DAY OF SEPTEMBER, 2017.

O.A. ANGOTE

JUDGE