

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC. CASE NO. 251 OF 2017

CONSOLATA NANJALA NAMULEKWA.....PLAINTIFF

-VERSUS-

SILVERIO SINGORO.....1ST DEFENDANT

GEORGE MAINA KIMONDO.....2ND DEFENDANT

RULING

Through the application dated 12/4/2017, the Plaintiff seeks to restrain the 2nd Defendant or his agents from interfering with Plot number 255, Mwiki (“the Suit Property”). The application is supported by an affidavit in which she depones that the 1st Defendant is her husband and that he has entered into a sale agreement with the 2nd Defendant for the sale of the Suit Property which the 1st Defendant owns. She avers that she was shocked when she was served with a notice to vacate the Suit Property which is her matrimonial home by the 2nd Defendant. She wrote to Mwiki Company Ltd seeking its intervention to stop the transfer of the plot to the 2nd Defendant but was told that she can only lodge a caution at the Ministry of Lands. No title has been issued for the plot. The Plaintiff claims to be 2nd wife of the 1st Defendant; said to be residing in Bungoma with his 1st wife.

Patista Nasimiyu Singoro swore the replying affidavit in opposition to the application. She deponed that she is the 1st Defendant’s wife and that she gave her consent as the spouse of the 1st Defendant for the sale of the Suit Property to the 2nd Defendant. She avers that her matrimonial is in Bungoma where she resides with her husband. She swears that there is a small house on the Suit Property where the 1st Defendant would stay when he occasionally visited Nairobi. She confirms that the Suit Property is not their matrimonial home. She urged the court to dismiss this suit while expressing her utter shock and dismay at the allegations made by the Plaintiff.

The Plaintiff swore a replying affidavit in which she asserts that she is the 2nd wife of the 1st Defendant and that she got married to him on 30/10/1980 and that he paid dowry to her parents. She sought to rely on the letter from the Chief, Mwiki Kasarani to confirm that she is the wife of the 1st Defendant. Unfortunately this letter was not attached to the affidavit. She claims that the 2nd Defendant sent men to who removed and carried away taps, the rooftops, electricity metres, the steel doors and other household items from the Suit Property.

The court has considered the submissions filed by counsels. The Plaintiffs submission relate to the issue whether there is a subsisting marriage between the Plaintiff and the 1st Defendant and whether the Suit Property is matrimonial property. The other question is, whether the Plaintiff’s consent was required before the 1st Defendant could the suit land to the 2nd Defendant.

The court also looked at the submissions filed by the Defendant. The 1st Defendant denies that the Plaintiff is his 2nd wife. He also denies that the Suit Property was his matrimonial home with the Plaintiff. The 1st Defendant maintains that the Plaintiff has failed to prove that she is the wife to the 1st Defendant hence the suit land cannot be deemed to be matrimonial property. The Plaintiff has also not shown that she was occupying and using the suit land as a family home or that it was acquired during the subsistence

of a marriage. The 1st Defendant contends that having failed to prove that she was the wife of the 1st Defendant; the Plaintiff's consent was not required for the sale of the suit land.

The principles that guide the court when in application for injunction are that the Plaintiff has a *prima facie* with a probability of success and that she will suffer irreparable harm if the orders are not granted. If in doubt, the court looks at where the balance of convenience lies.

The Plaintiff has failed to demonstrate that she is the 1st Defendant's wife or that the suit land is matrimonial property. She has not shown that she has a *prima facie* case against the 1st Defendant with a probability of success. The application is dismissed with costs to the 1st Defendant.

Dated and delivered at Nairobi this 5th day of December 2017.

K. BOR

JUDGE

In the presence of: -

Mr. Wanjohi for the Plaintiff

No appearance for the Defendant

Mr. V. Owuor- Court Assistant