



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
CIVIL CASE NO. 166 OF 2012 (OS)

EW M.....PLAINTIFF/RESPONDENT

=VERSUS=

1. J M K

2. MA W N.....DEFENDANTS/APPLICANTS

R U L I N G

Introduction:

1. This matter was commenced by way of an Originating Summons. The Plaintiff filed an Application for injunctive orders dated 25th October 2012 seeking to restrain the Defendants from entering the suit property pending the hearing of the suit property.
2. That Application was never heard *inter-partes* for one reason or the other although the court ordered that the status quo should be maintained.
3. The Respondent in the Originating Summons has now filed an Application dated 5th February, 2014 seeking for the following interim orders:
 - a. **THAT this Honourable Court do issue an interlocutory and preservation order preserving all that property which is the subject matter in the suit herein to wit; Land parcel numbers LAMU/LAKE KENYATTA [particulars withheld], LAMU/LAKE KENYATTA [particulars withhhel], Domestic animals, water tank-1000 litres, water pump make Honda-5.5 Horse Power, drip irrigation pipe, green house for tomato farming and the stoppage of quarrying of building stones pending the determination and final disposal of the suit.**
 - b. **That this Honourable Court do issue other or such further orders as it may deem fit and just to grant in the interest of justice.**
 - c. **THAT costs of the Application be in the cause.**

The Defendant's/Applicant's case:

4. According to the Defendant/Applicant, the subject matter of the suit is a matrimonial property in which the Plaintiff is equal sub-division; that he has maintained the status quo as ordered by the court and that the Plaintiff has disposed of part of the suit property to wit, the water tanks and seven goats without the Defendant's authority.
5. The Applicant has further deponed that the Plaintiff/Respondent has employed workers who are on a daily basis quarrying building stones, an act which will render the suit nugatory.

The Plaintiff's/Respondent's case:

6. In response, the Plaintiff has deponed that she in July 2012, applied for a loan to re-start the business of excavating stones and selling building materials. She also put up a green house and a fish pond on the suit property.
7. It is the Plaintiff's deposition that the farming, quarrying activities and selling of building materials that she is currently doing are activities which she established when the 1st Defendant abandoned her and that is the status quo. If the said status quo is altered, it was deponed, the Plaintiff will not be able to sustain herself or re-pay her loan to Equity Bank.

Analysis & findings:

8. This matter has been partly heard. The Plaintiffs claim in the suit is for a declaration that L.R. Number No. Lake/Kenyatta [*particulars withheld*] should be declared Matrimonial property and that it was jointly owned by the herself and the Applicant.
9. Although the Plaintiff filed an Application for injunction, she did not prosecute it. Indeed, the order of status quo that the court granted *suo moto* was meant to facilitate the out of court negotiations that were going on between the parties. The court did not define what the “*status quo*” was at that particular moment.
10. The suit property is registered in the name of the 1st Defendant/Applicant. The Plaintiff is seeking to have the property shared amongst herself and the 1st Defendant pursuant to the provisions of Section 17 of the Married Women's Property Act, 1882. Currently, we have the Matrimonial Property Act, which, in my view, will apply to this particular suit.
11. It is not in dispute that as at the time of filing this suit, it is the Plaintiff who was using the property for farming purpose. However, the interests of the Plaintiff viz-a-viz those of the 1st Defendant in the suit property have not been determined by the court.
12. This being a court of law and equity, and considering that the court of equity does not issue its orders in vain, the suit property ought to be preserved in its present state so that whoever succeeds in his or her claim is not confronted with a wasted piece of land.
13. The quarrying of stones on the suit property, as admitted by the Plaintiff has the effect of changing the nature and character of the suit property, which is prejudicial to the Defendants' interests. However, considering that it is the Plaintiff who has been utilising the property for farming purpose, and in view of the fact that farming does not have a negative impact on the land, the Plaintiff should be allowed to continue using the suit property for farming purposes and residing thereon.
14. In the circumstances, and for the reasons I have given above, I partly allow the Defendant's Application dated 5th February, 2014 in the following terms;
 - a. **A preservation order preserving land parcel number Lamu/Lake Kenyatta [*particulars withheld*] and [*particulars withheld*] be and is hereby issue pending the hearing and final disposal of the suit.**
 - b. **The Plaintiff/Respondent be and is hereby restrained from quarrying of building stones on parcel of land number Lake Kenyatta [*particulars withheld*] and [*particulars withheld*] pending the hearing and disposal of the suit.**
 - c. **Save for what has been stated above, the *status quo* prevailing now to be maintained until the suit is heard and determined.**
 - d. **Each party to bear his or her own costs.**

Dated and Delivered in Malindi this 9th day of May, 2014.

O. A. Angote

Judge