

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

ENVIRONMENT AND LAND COURT

E.L.C. NO.242 OF 2013

MARGARET WANGUI KANGETHE.....PLAINTIFF

VERSUS

PAUL KANGETHE MAINA.....DEFENDANT

RULING

The application dated 25th November 2013 is not opposed. The applicant has asked the court to restrain the defendant from selling the matrimonial home situated on **L.R. NO.LOC.12/SUBLOC.1/T.24**. The application dated 25th November 2013 seeks orders that the defendant/respondent, his agents and/or his servants be restrained from selling, transfer or interfering with the land in dispute until the hearing and determination of this suit.

The application is supported by the affidavit of Margaret Wangui Kangethe who states that the defendant is her husband who resides at Kangema town and his address of service for the purpose of this suit is through a court process server. They got married in the year 2000 under Kikuyu Customary laws. Before the two got into their marriage they worked together as tailors and therefore they started a tailoring shop soon thereafter. In the year 2002 the two were blessed with a sons namely Samuel Maina and later in the year 2006 Peterson Kabiru. In the year 2006 the family bought L.R. NO.LOC12/SUB-LOC1/GAKIRA/T.24 which is the subject of this dispute and built their matrimonial home on the land. On 26th September 2007 the family bought L.R. NO.LOC.12/SUB-LOC1/T.56 which was later sold by the defendant without informing the other members of the family. The defendant obtained a loan from Equity Bank on 12th November 2012 using the land in this dispute as security.

On learning that the defendant had taken a loan using the land in dispute the plaintiff inquired about it and the defendant became violent and even went on to the P.M's Court at Kangema to file C.C. No.52 of 2012 and obtained orders to restrain the plaintiff from the family business. However the said orders were later vacated on 18th March 2013 and that was when the plaintiff found that the defendant had messed up the business and she had to find ways to pay the loan to protect the property from sale by the bank.

Later, on 30th may 2013 the plaintiff made agreement with the bank on the way she was to pay the said loan in her effort to save the home for the family's shelter.

I have considered the application and submissions of the applicant in the absence of the defendant who was served but neither filed any document nor appeared in court and do find that the application is merited as the applicant is the wife of the defendant and as a wife, has overriding interest in the suitland.

Section 28 of the land Registered Act provides for spousal rights over matrimonial property as overriding interests in land.

The application is merited as the applicant has established a prima facie case with a likelihood of success and that the applicant is likely to suffer irreparable loss if stay is not granted and the same is granted as prayed.

Dated, signed and delivered at Nyeri this 3rd day of December 2013

A. OMBWAYO

JUDGE