



**George v Asmervik (Environment & Land Case E054 of 2023)
[2024] KEELC 7462 (KLR) (13 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7462 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE E054 OF 2023
SM KIBUNJA, J
NOVEMBER 13, 2024**

BETWEEN

JOYCE MUENI GEORGE PLAINTIFF

AND

SVERE INGVAR ASMERVIK DEFENDANT

RULING

Notice of Motion Dated 27th December 2023

1. The plaintiff moved the court through the notice of motion dated the 27th December 2023 seeking for inter alia that status quo be maintained pending the hearing and determination of the application, and temporary injunction to issue restraining the defendant from entering the suit properties, interfering, making further changes and or further destroying the plaintiff's property on the listed suit premises. The application is premised on the fourteen (14) grounds on its face and supported by the affidavit of JMG, the plaintiff, sworn on the 27th December 2023, in which she among others deposed that the defendant and herself got married on 5th November 2013 before the Registrar of Marriages, Mombasa; that in the course of their marriage they acquired the listed properties; that the defendant has without any colour of right, justification in law and without her consent purportedly sold, transferred, alienated, leased out or otherwise disposed of the matrimonial properties of the marriage; that she lodged caveats and or legal charges on all the known properties and assets of the marriage, and unless the orders sought are granted, she is apprehensive the defendant will continue acting in a manner prejudicial to this case.
2. The application is opposed by the defendant through his replying affidavit sworn on the 22nd January 2024, inter alia deposing that the suit is an abuse of the court process and should be dismissed with costs; that the plaintiff and himself got married on 5th November 2013, and lived together until 8th January 2017, when their marriage broke down irretrievably and have since lived separately; that during their marriage he acquired properties without the plaintiff's contribution and registered them in their



names; that upon their separation, they entered into an agreements dated 31st October 2018 and August 2019 for the plaintiff to sell her shares of the properties at Mtomondoni and Kikambala to him, which she signed; that he did not need the the plaintiff’s consent to sell the plots as she had sold her interests to him; that he had given the plaintiff Kshs.18 million, and that clause 3 of their agreement dated 31st October 2018, that was witnessed by their respective lawyers, provided that “No other claim, whether economical or material, related to the marriage, separation or divorce will be done now or in the future” and the plaintiff should not have filed this suit against him.

3. The court issued directions on filing and exchanging submissions on the 30th May 2024. The learned counsel for the plaintiff and defendant filed their submissions dated the 23rd July 2024 and 24th September 2024 respectively, which the court has considered.
4. The issues for the court’s determinations are as follows:
 - a. Whether the plaintiff has met the threshold for the injunctive order sought to be issued.
 - b. Who pays the costs?
5. The court has carefully considered the grounds on the application, affidavit evidence, the submissions by the learned counsel, superior courts decisions cited and come to the following determinations:
 - a. This suit was commenced through the plaint dated 27th December 2023, and inter alia seeks an order that the transfers over the various listed properties, suit properties, are null and void; order for Registrar of Titles to restore the titles of the said properties to the plaintiff and defendant; general damages, costs and interests. The application was filed together with the said plaint and seeks for injunctive orders to safeguard the suit properties pending the hearing and determination of the suit.
 - b. Upon the filing of the suit and application, the court issued directions on 27th December 2023, for among others, service and filing of replies. During the first mention of 25th January 2024, the learned counsel for the parties agreed on the status quo order, and timelines for filing and exchanging submissions were given. The Plaintiff’s counsel has submitted that even if the parties are separated, the plaintiff still has rights over the suit properties. The counsel has referred to several superior courts decisions including the case of Agnes Nanjala William versus Jacob Petrus Nicholas Vanda Goes Civil Appeal where the court held that:

“ Article 45(3) of *the Constitution* of Kenya provides that parties to a marriage are entitled to equal rights at the time of marriage, during the marriage and at the dissolution of marriage. This Article clearly give both parties to a marriage equal right before, during and after a marriage ends. It arguably extends to matrimonial property and a constitutional principle that marital property is shared 50-50 in event of the dissolution of the marriage.”

The counsel also cited the case of Kadzo Mkutano versus Mkutano Mwamboje Kadosho & 2 Others [2016] eKLR, in which the court held that section 28 of *Land Registration Act* recognizes spousal rights over matrimonial properties and any alienation without such consent is null and void. On his part, the learned counsel for the defendant submitted that the spousal consent under section 28 of the *Land Registration Act* no longer exists following the amendment of the Act through section 11 of the Land Laws (Amendment) Act. That further, the sale agreements and transfers were executed by both the plaintiff and defendant when they were spouses.



- c. The court is not expected to make any final determinations on matters of law and facts at this interlocutory stage, as it has to wait for the pleadings to be closed, hearing of the main suit when the parties evidence will be tested through cross-examinations, final submissions by counsel before doing so through the judgement. However, with the factual materials presented by both parties, I find this to be an ideal case where parties should continue maintaining the status quo, as they have done since the consent order of 25th January 2024 was made, pending the hearing and determination of the suit.
- d. Under section 27 of *Civil Procedure Act* chapter 21 of Laws of Kenya costs should follow the event unless where otherwise ordered for good reasons. In this instance, I find due to the apparent relationship between the parties, the costs should abide the outcome of the suit.
6. In view of the foregoing determinations, the court finds and orders as follows:
- a. That the application dated the 27th December 2023 is compromised through an order that the parties continue maintaining the status quo that they have been observing since 25th January 2024, until the suit is heard and determined.
- b. That the costs to abide the outcome of the main suit.

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 13TH DAY OF NOVEMBER 2024.

S. M. Kibunja, J.

ELC MOMBASA.

In the Presence of:

Plaintiff : M/s Ngoizi for Mogaka

Defendant : Mr Wameyo

Leakey – Court Assistant.

S. M. Kibunja, J.

ELC Mombasa.

