



**SNN v DJG (Matrimonial Case E008 of 2023)
[2024] KEHC 1929 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1929 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MATRIMONIAL CASE E008 OF 2023
SM MOHOCHI, J
FEBRUARY 29, 2024**

BETWEEN

SNN APPLICANT

AND

DJG RESPONDENT

RULING

1. Before me is Notice of Motion dated 24th October, 2023 filed under Order 40 Rule 1 and 2 and Order 51 of the Civil Procedure Rules, Section 1A, 3B and 3A of the Civil Procedure Act Section 12 (1), 3) of the Matrimonial Property Act No. 49 of 2013 and all enabling provision of the Law Seeking the following reliefs:
 - i. Spent
 - ii. Spent
 - iii. That, pending the hearing and determination of the originating summons herein this court be pleased to restrain the Respondent by himself, his servants, employees, agents, assigns and/or any person or entity claiming through or under him, from entering, remaining, taking photos ,interfering with the construction thereon or the workers thereon and/or in any way dealing with the subject parcel of land known as (Particulars Withheld) measuring approximately 0.0400 Hectares contrary to the rights and/or interests of the Applicant.
 - iv. That the costs of this application be provided for.
2. The Application is premised on the annexed affidavit of Susan Nkatha filed therewith, the following grounds and/or such further grounds to be raised and canvassed during hearing hereof:



- i. That the Respondent and Applicants have since separated and there is an existing Domestic Violence Order, issued by the Australian Court, in favour of the Applicant as against the Respondent which order will subsist until the year 2027.
 - ii. That, during the subsistence of the said marriage, the Applicant and the Respondent could each purchase individual properties without involving the other party.
 - iii. That, the Respondent purchased properties in (Particulars Withheld) and has built a three-bedroom house in (Particulars Withheld).
 - iv. That similarly, the Applicant purchased all that property known as (Particulars Withheld) and obtained a titled deed registered in her name.
 - v. That the Respondent never paid a single cent towards the acquisition and subsequent development of the said property and any amount he ever gave, the Applicant duly refunded the same upon the demands of the Respondent. The Respondent therefore relinquished any rights he might have had on the subject property.
 - vi. That the Respondent has started interfering with the ongoing construction of the property where he has formed a habit sending his representatives and/or agents to the construction site whereby the said representatives are taking photos of the building which acts are posing a security threat on the workers thereon forcing them to almost down their tools.
 - vii. That it is therefore mete and just that this Honorable Court do come to the Applicant's rescue and aid since the Applicant will suffer irreparable loss if the Respondent is not restrained from interfering with the said construction which the Applicant has solely heavily invested on.
 - viii. That it is in the interest of justice that the orders sought are granted.
3. This Court Certified the matter as urgent allowed the 1st three prayers as follows;
- i. That, Application is hereby certified as urgent and service of the same is dispensed with in the 1st instance.
 - ii. That, a temporary Restraining Order is hereby issued against DJG, his agents, servants, employees, assigns and/or persons or entities through or under him, from entering, remaining, taking photos, interfering with the construction or the workers thereon, or in any way dealing with the subject parcel of land commonly known as (Particulars Withheld) pending hearing and determination of this Application.
 - iii. That, the Applicants shall serve the Application upon the Respondent within 14 days from today (not later than 14th November 2023).
 - iv. That, the respondent shall file his response within 14 days from today (Not later than 29th November 2023).
 - v. That, an inter parte Mention for further direction on the 1st December 2023. Given under my Hand and the Seal of this Honourable court this 31st October 2023.
4. By a Return of Service dated 14th November the Respondent was served and failed and or refused to respond or defend the motion.
5. The Notice of Motion is thus undefended I thus allow the Application as prayed.



- 6. A Restraining Order is hereby issued against DJG, his agents, servants, employees, assigns and/or persons or entities through or under him, from entering, remaining, taking photos, interfering with the construction or the workers thereon, or in any way dealing with the subject parcel of land commonly known as (Particulars Withheld) pending hearing and determination of this Originating Summons.
- 7. The Costs of this Application shall be in the cause.
- 8. It is so Ordered

SIGNED, DATED AND VIRTUALLY DELIVERED AT NAKURU THIS 29TH DAY OF FEBRUARY,2024.

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MOHOCHI S.M
(JUDGE)

