



REPUBLIC OF KENYA.

IN THE ENVIRONMENT & LAND COURT AT KITALE.

LAND CASE NO. 99 OF 2014.

V N ::: PLAINTIFF.

VERSUS

E W K ::: DEFENDANT

R U L I N G .

1. The plaintiff/applicant is the wife of the defendant/respondent. On 16/6/2014 the applicant filed a notice of motion in which she sought the following reliefs:-

(1) That a temporary injunction be issued restraining the defendant/respondent from entering upon, selling, charging, collecting rent or in any other way interfering with the plaintiff/applicant's peaceful possession and occupation of land parcel No. Kitale Municipality Block *[particulars withheld]* pending hearing and determination of this suit.

2. That an inhibition order be issued over land parcel No. Kitale Municipality Block *[particulars withheld]* pending hearing and determination of this suit.

3. Costs be provided for.

2. The respondent is the registered owner of Kitale Municipality Block *[particulars withheld]* (suit premises). The applicant contends that she has three children with the respondent and that the suit premises is matrimonial property. That in April, 2014 the respondent deserted the matrimonial home and later sent her a text message that he wants to sell the suit premises. That on 6/5/2014 the respondent came in the company of a stranger and started taking pictures of the suit premises. That she has made enquiries from close family members who have informed her that the respondent wants to sell the suit premises in order to force her out.

3. The applicant contends that on 12/6/2014, she arrived home only to find that the respondent had disconnected electricity in the matrimonial home. She in turn decided to switch off electricity for all tenants. The applicant further contends that she has been collecting rent from the suit premises which monies she uses to pay their children's school fees. She contends that unless an injunction is issued she will be evicted from the suit premises.

4. The respondent has opposed the applicant's application based on a replying affidavit sworn and filed in court on 27/6/2014. The respondent contends that he did not desert the applicant as alleged. That the

applicant is his second wife and that for the period he was away he had gone to his first wife.

5. The respondent avers that he has no intention of evicting the applicant from the matrimonial home and that it is the applicant who wants to bar him from his own home. The respondent contends that the applicant has her own property registered in her name and that she collects rent from the said property. The respondent contends that the applicant is seeking the orders for ulterior motives.

6. I have gone through the annexures to the supporting affidavit as well as the replying affidavit. The applicant is seeking an injunction restraining the respondent from accessing the suit premises or even collecting rent. The principles for grant of an injunction are now well settled. First an applicant must demonstrate that she has a prima facie case with probability of success. Secondly, an injunction will not normally be granted unless the applicant might otherwise suffer irreparable loss. Thirdly, if the court is in doubt, it will decide an application on a balance of convenience.

7. In the present case the applicant has deponed that her relationship with the respondent is sour. She wants to restrain the respondent from accessing or collecting rent from the suit premises. There is no contention that the suit premises is registered in the name of the respondent. The respondent has deponed that the applicant is his second wife. It is not known when the property was acquired or even when the applicant was married to the respondent. The applicant has not denied that she has a separate property registered in her sole name. She has not denied that she is collecting rent from the premises registered in her name. It is therefore difficult to justify grant of the orders the applicant is seeking. The applicant seems to be intent on locking out the respondent from his own home. She even wants to prevent him from collecting rent. How will the other wife survive? We are not told if she has any property of her own or even if she is able to sustain herself.

8. The applicant has merely claimed that the respondent has threatened to sell the suit premises, that she was sent some message on her phone and that she has been informed that the respondent wants to sell the suit premises. There was no attempt to table any evidence on these allegations. A court of law cannot act on mere apprehension which is not supported by anything. If the applicant is seeking to assert her rights under the Matrimonial Property Act, there are clear provisions to do so. She is not seeking division of property as they are not yet divorced. If she wants her interest in the property determined, section 17 of the Matrimonial Property Act of 2013 provides the way out. Article 45 (2) of the Constitution provides that:-

“Parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage.”

It will be against the constitution to lock out the respondent from accessing his own home or collecting rent from his own premises. No court of law can grant an injunction in terms proposed by the applicant. I do not think that she has a prima facie case with probability of success.

9. Kenyan laws have provided various ways in which matrimonial property can be protected. One cannot register a charge or sale property without spousal consent. The Matrimonial Property Act 2013 provides that a party to a marriage can move to court to have her rights to property determined. Even where there is divorce, the couple still have their rights which will be determined in accordance with the relevant laws.

Property is meant to be enjoyed. This includes the same being charged to raise money for other developments. The courts cannot stand on the way of the parties from enjoying their rights to property. This is why the various laws provide, safeguards which ensure that property is enjoyed equitably with all

spouses. I do not think an order of inhibition is justified in the circumstances.

10. The applicant has admitted in her supporting affidavit that she switched off lights for all tenants. This is a way of arm twisting the respondent and at the same time infringing the rights of tenants who have paid money to enjoy those services. This is not the kind of conduct which deserves of an equitable remedy. I find that the applicant's application lacks merit. The same is hereby dismissed with no order as to costs.

It is so ordered.

[Dated, signed and delivered at Kitale on this 17th day of December, 2014.]

E. OBAGA.

JUDGE.

In the presence of M/s. Arunga for applicant.

Court Clerk – Kassachoon.

E. OBAGA.

JUDGE.

17/12/2014.



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