



FL v MMO (Civil Suit 35 of 2019) [2024] KEHC 9327 (KLR) (Family) (25 July 2024) (Judgment)

Neutral citation: [2024] KEHC 9327 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL SUIT 35 OF 2019
HK CHEMITEI, J
JULY 25, 2024**

BETWEEN

FL APPLICANT

AND

MMO RESPONDENT

JUDGMENT

1. This judgment relates to the Originating Summons dated 13th September, 2019 filed by the Applicant, FL seeking for orders that:-
 - a. Property Title Number Donyo Sabuk/Komarock Block 1/7XX7 be sold and the proceeds thereof be divided according to the share of contribution of each party.
 - b. Property Title Number Donyo Sabuk/Komarock Block 1/7XX8 be sold and the proceeds thereof be divided according to the share of contribution of each party.
 - c. Property Title Number Kajiado/Kitengela/41XX6 be sold and the proceeds thereof be divided according to the share of contribution of each party.
 - d. Motor vehicle registration Number KCC 0XXR, a Toyota Prado, be transferred and be held absolutely in favor of the Applicant LF in accordance with the agreement of the parties dated 20th April, 2016.
 - e. Motor vehicle registration number KCG 2XXH, a Toyota Prado, be transferred and held absolutely in favour of the Applicant LF in accordance with the agreement of the parties dated 20th April, 2016.



- f. Motor vehicle registration number KCC 5XXS, a Toyota Fielder, be transferred and held absolutely in favour of the Applicant LF in accordance with the agreement of the parties dated 20th April, 2016.
 - g. Motor vehicle registration number KBY 8XXQ, a Toyota Landcruiser, be transferred and held absolutely in favour of the Applicant LF in accordance with the agreement of the parties dated 20th April, 2016.
 - h. Motor vehicle registration number KCG 5XXQ, a Toyota Alphard, which has pending court case awaiting compensation by the Insurance, that the proceeds awarded in any decree thereof be paid to the Applicant LF upon successful settlement of the claim and further in accordance with the agreement of the parties dated 20th April, 2016.
 - i. Motor vehicle registration number KCD 5XXB, a Toyota Hiace, be transferred and held absolutely in favor of the Applicant LF in accordance with the agreement of the parties dated 20th April, 2016.
 - j. Motor vehicle registration number KCE 0XXS, a Toyota Prado, which was subject of a seizure by the Kenya revenue Authority has a pending suit in court, any proceedings arising therefrom be paid absolutely to the Applicant LF in accordance with the agreement of the parties dated 20th April, 2016.
 - k. Motor vehicle registration number KBM 4XXV, a Mitsubishi Truck, be sold and the proceeds thereof be divided according to the share of contribution of each party.
 - l. Motor vehicle registration number KBZ 0XXN, a Toyota Landcruiser, be held absolutely by the Applicant LF upon proof of contribution towards purchase and in accordance with the agreement of sale signed by the parties.
 - m. The honourable court be pleased to make a declaration of spousal liability against the Respondent MMO for Kshs. 600,000/= being a debt arising out of an agreement of the parties dated 27th July, 2019, payable to the Applicant Fang Lang.
 - n. The honourable court be pleased to make a declaration of spousal liability against the Respondent MMO for Kshs. 663,000/= being a debt arising out of an agreement of the parties and/ or express admission by the Respondent dated 25th July, 2019, payable to the Applicant FL.
 - o. The honourable court be pleased to make a declaration of spousal liability against the Respondent MMO for Kshs. 1,200,000/= being a debt arising out of an agreement of the parties and/ or an express admission by the Respondent dated 13th November, 2018, payable to the Applicant Fang Lang.
 - p. The Deputy Registrar be empowered to sign any documents that the Respondent may refuse to sign.
 - q. This honourable court be pleased to grant such further or other relief as may be just in the circumstances.
 - r. The Respondent be condemned to pay the costs of this application and incidentals thereto.
2. When the matter came up for hearing the Respondent did not show up despite being served.
 3. The Applicant testified reiterating the contents of her affidavit in support of the Originating summons.



4. It was her case that she had basically contributed 100% to the acquisition of the property prior to her divorce with the Respondent. In the course of their marriage they were blessed with two children who are in her care and custody.
5. She said that the proceeds for the purchase of the motor vehicles came from her. That she had about kshs 40 million which she invested in the company.
6. She however relinquished her claim on the properties namely DONYO SABUK./KOMAROCK BLOCK 1/7XX7 and Donyo Sabuk/Komarock Blck 1/7XX8 as the same were purchased by the Respondent before they married.
7. She said that she however bought Kajiado/Kitengela/41XX6 although it was registered under his name for she was told that as a foreigner she could not be registered as a proprietor.
8. The court has perused the proceedings herein and it is evident from the myriad of applications that indeed the Applicant contributed largely to the acquisition of the same especially the motor vehicles.
9. As a matter of fact, they entered into a settlement agreement dated 20th April 2016 which is still subsisting to date.
10. In view of the said settlement which I think it is in line with the wishes of the parties' judgment is therefore entered as follows:-
 - (a) That the following properties though matrimonial properties were acquired during the subsistence of the marriage between the Applicant and the defendant were purchased by the Applicant and ought to be transferred to her, namely:
 - (i) Motor vehicles registration number KCC 1XXR, KCG 2XXH, KCC 5XXS, KBY 8XXQ, KCG 5XXQ, KCD 5XXB, KCE 0XXS, KBM 4XXV, KBZ 0XXN.
 - (ii) Land parcel number Kajiado/Kitengela/41XX6 to be sold and the proceeds shared between the Applicant and the defendant after valuation and that either of the parties after the said valuation be at liberty to buy off the other.
 - (iii) The above (ii) exercise be done within 90 days from the date herein.
 - (b) The Deputy Registrar of this court be at liberty to sign any transfer instruments so as to have the above assets transferred to the Applicant in the event that the Respondent declines or unavailable to sign.
 - (c) There was no evidence presented to the court in respect to the other prayers concerning some agreements between the parties and therefore declined.
 - (d) Costs in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 25TH DAY OF JULY 2024.

H K CHEMITEI

JUDGE

