



**Kasidhi v Ochieng (Civil Case E002 of 2022)
[2023] KEHC 2388 (KLR) (28 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2388 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CIVIL CASE E002 OF 2022
KW KIARIE, J
MARCH 28, 2023**

BETWEEN

JOSEPH OKIKI KASIDHI APPLICANT

AND

ROSEMARY OKWIRRY OCHIENG RESPONDENT

JUDGMENT

1. Joseph Okiki Kasidhi, the applicant herein, moved the court by Notice of Originating Summons dated October 21, 2022. It was brought under sections 6, 7, 9, 14 & 17 of the [Matrimonial Property Act, 2013](#), sections 3 & 3A of the [Civil Procedure Act](#), Order 40 Rules 1, 2, 3 & 4 of the [Civil Procedure Rules](#) & articles 45 (3) & 68 (c) (iii) of the [Constitution](#) of Kenya. She is seeking the following orders:
 - a. That an order do issue declaring that the applicant has equal beneficial interest in property and the proceeds from the jointly owned matrimonial property namely Kasgunga/Kamreri/4482 measuring approximately 0.26 hectares together with all the developments therein.
 - b. That this honorable court be pleased to order for sharing of spaces in the main residential premises situated in the suit matrimonial property in such a manner that would consider the health condition of the applicant who is currently assigned the upper floor alone as the respondent exclusively occupies the ground floor.
 - c. That due to the deteriorating health condition of the applicant the said main residential house situated on the suit matrimonial property be shared and/or occupied between the applicant and the respondent as proposed by Arch. John Omondi Adoda of Afrotronic Home Design in order to accord the applicant convenience as per his current health conditions.
 - d. That the other premises other than main residential house be shared out as well between the applicant and the respondent.



2. The application was premised on the following grounds:
 - a. The applicant and the respondent have been married since the year 2014.
 - b. That the said marriage between the applicant and the respondent has since been dissolved on the January 6, 2022 vide Mbita SRMC Divorce Cause No. E005 of 2021 (Rosemary Okwirri Ochieng vs. Joseph Okiki Kasidhi).
 - c. That the applicant donated his ancestral land which he then caused to be registered in his joint names with the respondents as title number Kasungu/Kamreri/4482 measuring 0.26 hectare.
 - d. That after causing the registration of the said land in their joint names, the applicant and the respondent have since established their matrimonial home on the said L.R. No. Kasungu/Kamreri/4482 which comprises a maisonette, a servant Quarter, a gazebo and chicken house structures.
 - e. That the applicant and the respondent were initially occupying and using premises developed upon the suit property equally together until when their relationship irretrievably broke down thereby forcing them to live separately with the applicant reluctantly leaving the ground floor for the respondent and settling on the upper floor.
 - f. That the applicant is suffering from a spinal health condition that has resulted into major surgeries with limited improvement and the applicant is now a registered disabled person whose health condition is increasingly making it very difficult to occupy the upper floor of the main residential building.
 - g. That consequently the applicant has sought the advice of the architect of the said main house with a view to propose how the said house can be shared and used between the applicant and the respondent while considering the current health condition of the applicant.
 - h. The said architect has come up with the most credible and advisable manner of sharing out the spaces in the said main residential house between the applicant and the respondent while considering all factors of safety, standards health and building regulations.
 - i. That the current arrangement whereby the applicant exclusively lives on the upper floor is steadily rendering the applicant homeless in his retirement due to his aforesaid health condition as it becomes very challenging for him to use the upper floor.
 - j. The matrimonial property is at the heart of the applicant as it is ancestral property which accords the applicant opportunity to live amongst his kindred and/or people hence he has no intention howsoever to have the same disposed of at all due to such sentimental values.
3. Rosemary Okwirry Ochieng the respondent, opposed the application on the following grounds:
 - a. That during the pendency of the said marriage, the two built their matrimonial home on land parcel. Kasungu/Kamreri/4482.
 - b. That she invested the bulk of the money towards the construction of the matrimonial home.
 - c. That during the construction of the home, she spent an excess of 1.5 million while the applicant contributed approximately 3.5. Million.
 - d. That the proposal by the applicant to put up an extension on the ground floor of the matrimonial home is ill-informed since the same shall greatly change its structural design and make it lose aesthetic value.



4. The two parties herein do not agree on the contribution made by each party. Whereas both agree on the amount the applicant contributed, it is disputed as to what the respondent's share was. The applicant put her contribution at Kshs. 3.1 million. She however did not support Kshs.8.5 million with any documentation. This therefore left her contribution to about half. This probably explains the reason why both are currently content with 50:50 sharing of the main house.
5. I therefore find that each of them contributed 50% towards the construction of the maisonette.
6. Currently, the two are sharing the maisonette horizontally, the applicant occupying the upper floor. One of the reasons that has prompted his application is his deteriorating health. He says it is becoming difficult for him due to the condition that has forced him to resort to using clutches. This has not been denied by the respondent.
7. The applicant has put forth two proposal; one is to have the maisonette modified so that they can share it vertically. This has been opposed by the respondent who has argued that it was not practical. She however contended that she was willing to have her share bought by the applicant or alternatively, they sell the property and share out the proceeds. The applicant has argued that he was not willing to have his ancestral land sold out for he has sentimental attachment to it.
8. After hearing both parties and perusing their submissions, it emerges that the best option is to allow the applicant to buy out the respondent. This will translate to 50% of the maisonette, and the value of the gazebo and the servant's quarter valued seperately. Since both do not agree on the actual value, I will order that the two to appoint an independent valuer and failure to agree, they should approach the Institution of Surveyors of Kenya to appoint an independent valuer for them.
9. Since this is a matrimonial matter, each party to meet own costs.

Delivered and signed at Homa Bay this 28th day of March, 2023

KIARIE WAWERU KIARIE

JUDGE

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