



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MATRIMONIAL CAUSE NUMBER E001 OF 2020

MWK.....APPLICANT

VERSUS

NW.....RESPONDENT

J U D G M E N T

1. On 4th February 2019, the marriage between MWK and NWG was dissolved in Nakuru Chief Magistrate's Divorce Cause Number XX of 2018.

2. The applicant herein MWK filed this Originating Summons dated 5th October 2020 seeking orders;

“That a declaration be made on the division of the matrimonial properties [particulars withheld] Shop formerly known as [particulars withheld] Fashion Shop and ½ acre comprising of SABUGO PLOT NO. XXX situate within Ndundori, so that she gets the land, and the respondent gets the shop.”

3. In the Supporting Affidavit sworn on 5th October 2020, the applicant depones that;

“It was agreed that the matrimonial property be subdivided equally and the respondent chose to remain with the business known as [particulars withheld] Shop formerly known as [particulars withheld] Shop which runs up to date and I remain with the ½ acre comprised in Sabugo Plot No. XXX.”

She deponed further that she had been farming and occupying the ½ acre plot while the respondent ran the shop.

4. The respondent was served with the Originating Summons but never entered appearance nor filed any response. Hence the applicant's prayers are unopposed.

5. The applicant filed a Sale Agreement dated 27th August 2006 between the respondent as the buyer and seller. She appears on the agreement as a witness. The agreement says that it is for plot XXX, Sabugo.

6. The rest of Sale Agreement appears to be in the Kikuyu Language, and there is no interpreted version filed.

7. A Sale Agreement cannot be proof of ownership, as I have nothing before me to show that the parcel of land, described as plot number XXX, Sabugo is the same parcel of land as Sabugo Plot XXX situate in Ndundori, within Nakuru County. Neither do I have evidence that the seller even transferred the same to the respondent or the two parties herein.

8. In addition, there is nothing on record to show that the said parcel of land is registered either in the name of the applicant, or that of the respondent or in both the names of the parties herein.

9. Granted, there are no objections from the respondent, but that does not mean that the property belongs to him or the applicant.

10. Only a title deed or proof that the property is registered in the name of either or both parties would prove ownership of the property. Without that proof, the prayer sought cannot be issued.

11. The applicant will have 90 days from the date hereof to provide such proof in default of which the application will stand dismissed.

DATED, SIGNED AND DELIVERED VIA EMAIL THIS 18TH DAY OF JANUARY 2022.

MUMBUA T. MATHEKA,

JUDGE.

IN THE PRESENCE OF;

EDNA C/A

MUCHIRI GATHECA FOR THE APPLICANT