



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT HOMA BAY

CIVIL CASE NO.1 OF 2020

BETWEEN

JAO..... PLAINTIFF

AND

JNM...DEFENDANT

JUDGMENT

1. JAO, the plaintiff herein, moved the court by Notice of Originating Summons dated 20th May, 2020. It was brought under sections 6(3), 7 & 17 of the Matrimonial Property Act, 2013 & Articles 40 and 50 of the Constitution of Kenya. She is seeking the following orders:

a. That the defendant be restrained from further threatening to evict and/or evicting the plaintiff from the temporary (mabati) structure she occupies on land parcel number Kanyada/K/Kalanya/xxx.

b. That the defendant be directed to sell land parcel numbers Kanyada/K/Kalanya/xxx and Kanyamwa/K/Kwandiku/xxx in consultation and cooperation with the plaintiff, and that the proceeds of such sale be distributed among the parties at the ratio of 30% to 70%

c. That the costs of this application be provided for.

2. The application was premised on the following grounds:

a. The plaintiff and defendant got married in 1992.

b. The 2 properties above were acquired during their marriage and are therefore matrimonial properties.

c. That marriage between the plaintiff and the defendant was formerly dissolved on the 9th May 2019.

d. The plaintiff instituted a suit before this Honorable court, Civil Suit NO.6 of 2017, where this court determined on the 25th October, 2018 that the 2 properties above and that the parties hereto are entitled to the properties hereinabove at the ratio of 30% to 70%.

e. Despite the court's determination as above, the defendant has constantly and violently threatened the plaintiff with eviction from land parcel Number Kanyada/K/Kalanya/xxx, despite the plaintiff only occupying a small portion thereof.

f. That it is the constant threats, notices to vacate and the possible eviction that has necessitated this instant suit.

g. That the plaintiff believes that owing to the conduct of the defendant, it is only the sale and distribution of the proceeds of the 2 parcels above in the proportions already determined by this honorable court, that will give them peace as then the plaintiff will be able to use the proceeds to settle herself elsewhere.

h. That it is in the interest of justice and no parties will be prejudiced if the orders sought herein are granted.

3. Joshua Ndede Makobongo the defendant, opposed the application on the following grounds:

- a. That the applicant has been occupying a section of the property on land parcel number. Kanyada/K/Kalanya/xxx that is one with of the two bedroom house self-contained and two rooms temporary mabati house.
- b. That the permanent two bedroomed house she had been leasing and collecting rent of kshs.8,000/- per month from the date of the court's judgment and the temporary mabati house iskshs.2,000/- rent as the rent rates of the area.
- c. That from the foregoing I have been left with one wing of the house which is two bedrooms self-contained permanent house.
- d. That from the above information rent supposed to be collected is kshs.18, 000 per month.
- e. That according to the court's judgment of 70% to 30% the applicant is entitled to a sum of kshs.5, 400 per month.
- f. That allegations that the applicant has been living in the mabati structure and that I have been collecting rent from the permanent house on the sit property is not true.

4. A judgment of this court was delivered on 25th October, 2018 and the court held that the plaintiff is entitled to 30% of the matrimonial property.

5. The applicant is seeking orders to have land parcel number Kanyada/K/Kalanya/xxx and Kanyamwa/K/Kwandiku/xxx sold for her to realize her 30%. In my view this is a wrong and selfish approach. This ought to be the last resort.

6. I therefore make an order that the properties be valued by a professional valuer agreed upon by the parties and failure to agree on one, they may request the National Valuers body to appoint one for them. Once the value of the parcels have been realized, the defendant may opt to pay to the plaintiff her 30%. If he fails to do so within a reasonable time, then she may be at liberty to seek the orders for sale from the court.

7. For avoidance of any doubts, the valuation fees shall be shared between the two parties on pro rata basis. Each party will meet own costs of this Originating Summons.

DELIVERED AND SIGNED AT HOMA BAY THIS 31ST DAY OF MARCH, 2022

KIARIE WAWERU KIARIE

JUDGE