



REPUBLIC OF KENYA



KENYA LAW
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**SMJ v EMO (Originating Summons 61 of 2017)
[2022] KEHC 12034 (KLR) (Family) (28 July 2022) (Judgment)**

Neutral citation: [2022] KEHC 12034 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

ORIGINATING SUMMONS 61 OF 2017

AO MUCHELULE, J

JULY 28, 2022

IN THE MATTER OF MATRIMONIAL PROPERTY ACT, NO. 49 OF 2013

BETWEEN

SMJ APPLICANT

AND

EMO RESPONDENT

JUDGMENT

1. The applicant S.M.J. filed this originating summons dated October 5, 2017 against the respondent E.M.K. seeking a determination that L.R. No. Machakos/Mua Hills/645 and L.R. No. Nairobi/Block 140/782/ 006 were matrimonial property acquired and developed by the joint funds and efforts of the parties during their marriage, and that they were registered in the name of the respondent to hold in trust for her. She asked that the court be pleased to make such further order as the interests of justice may require.
2. In the grounds and the supporting affidavit and annexures, she pleaded that the two got married on May 3, 2003 at AIC Ngong Road as evidenced by the certificate of marriage which she produced. The marriage was blessed with two children, born on December 25, 2005 and November 14, 2010. The birth certificates were produced. She stated that they bought L.R. No. Machakos/Mua Hills/645 from the respondent's uncle in September 2008 for Kshs.150,000/=, out of which she paid Kshs.10,000/= and Kshs.140,000/= came from a fundraising held on February 3, 2011 following the respondent's road accident on December 29, 2010. The fundraising had been organised to raise money for his treatment. She then directly and personally contributed to the improvement and development of the property by building a site house, putting up barbed fence, connecting water to it, putting up storage tanks, putting up a shade net and planting trees and mango seedlings. When the title was processed on February 11, 2014 it came out in the name of the respondent. The property is 4 hectares.



3. As for L.R. No. Nairobi/Block 140/782/006, she stated that it is situated in Nyayo Estate in Embakasi in Nairobi. Her case was that the property was acquired by their joint efforts to raise Kshs.6,100,000/= that was the purchase price. The property was sold by the respondent's employer NSSF under tenant-purchase arrangement. The purchase price was raised following the sale of their house at Nyayo Highrise L.R. No. Nairobi/Block Nyayo/Kibera Highrise B3/15 for Kshs.2,320,000/=. She annexed documents of this sale and the deposit of Kshs.610,000/= for the NSSF house. The NSSF agreement was registered in the name of the respondent. The property has since been let out to tenants since 2013. The tenants pay Kshs.28,000/= monthly which goes to the respondent. The respondent pays Kshs.35,334/= per month towards the mortgage.
4. The applicant asked that it be declared that her contribution to the acquisition of the properties be 50% or such higher proportion that the court may determine.
5. The marriage between the applicant and the respondent was dissolved on June 23, 2017 in Divorce Cause No. 285 of 2016 at Milimani Commercial Courts. The certified copy of the judgment was produced.
6. The respondent was served with the summons but did not enter appearance or file a response. The evidence of the applicant was therefore not controverted. I accept it.
7. It is evident that the two properties were acquired in the course of the marriage between the applicant and the respondent, and therefore they constituted matrimonial property between them. The property was acquired and registered in the name of the respondent. I note that the NSSF property is still being bought by the respondent. He pays Kshs.35,334/= monthly towards the mortgage, after a deposit of Kshs.610,000/= was paid. He gets rent of Kshs.28,000/= monthly.
8. Under section 14 (a) of the Matrimonial Property Act, there is a rebuttable presumption that the two properties are held in trust for the applicant.
9. It is, however, provided under section 7 of the Act that upon the dissolution of the marriage the matrimonial property is shared in accordance with the contribution of either spouse towards its acquisition and/or development. Under section 6 of the Act, such contribution may be monetary or non-monetary. From the evidence by the applicant, the Mua Hills property was worth Kshs.150,000/= but she raised Kshs.10,000/= of it. She then built a site house, erected a barbed fence, connected water to it, put up a shade net, installed storage tanks and planted trees and mango seedlings. She provided receipts that amounted to Kshs.137,800/=. She made no reference to indirect contribution.
10. As for the NSSF house, after the deposit of Kshs.610,000/= that came from the sale of the Highrise house, the respondent has continued to alone pay for it on monthly basis from his salary. The house is on mortgage from NSSF. I consider that NSSF has an interest in the house until it is fully paid for.
11. Considering the principles of law and the facts of this case, including the values of the property and the contribution to their acquisition and development, I determine that the applicant shall get the whole of L.R. No. Machakos/Mua Hills/645 and the respondent shall get the whole of L.R. No. Nairobi/Block 140/782/006. The respondent shall within 45 days transfer L.R. No. Machakos/Mua Hills/645 to the applicant, failing which the Deputy Registrar of this court shall sign all the necessary papers to effect the transfer.
12. The costs of the case shall be in paid by the respondent.

DATED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 28TH DAY OF JULY 2022.

A.O. MUCHELULE



JUDGE

