



**R.M.N v T.M.M (Matrimonial Cause 6 of 2019)
[2022] KEHC 13055 (KLR) (22 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13055 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MATRIMONIAL CAUSE 6 OF 2019
MM KASANGO, J
SEPTEMBER 22, 2022**

BETWEEN

R.M.N APPLICANT

AND

T.M.M RESPONDENT

JUDGMENT

1. RMN (The husband) filed this case seeking declaration that the property (title withheld) registered in the name of TMM (the wife) is matrimonial property and that the said land be equally divided between him and the wife.
2. The husband's case is that the property was earmarked for him by his mother but because it could not be registered in his name for reason, the land buying company, Nyakinyua Investment Company did not allow its land to be registered in the name of a man, the same was registered in the wife's name.
3. The wife's case is that the land was given to her by her mother in law as a gift in the year 1996. That she later obtained the title deed of the same. Further, that she has lived on that land since 1996 with the children of marriage after the husband deserted the marriage. Further, the wife stated that the husband was given by his mother a parcel of land (Chania) which the husband sold to his brother. The wife depend further in her affidavit that:-

' That these proceedings are a desperate attempt by the applicant to cling on to a property which he is not part of as he has nothing left after selling his share of the property number Chania.'

4. The wife therefore denied that land the subject of this suit is matrimonial property.
5. The court received viva voce evidence.



6. The husband at the hearing reiterated that the land was given to him by his mother. That, it was him who balloted for it and that it was registered in the wife's name because of the Nyakinyua's policy not to have its land registered in the names of men. Although the husband stated that he balloted for the land and paid for survey, he did not produce evidence of the same.
7. The husband called his sister as a witness. On being asked whose land in question belonged to, the sister responded by saying that the land belonged to the husband's mother. Although this sister stated that her mother before her death left title deeds in her custody with instructions on who was to inherit which pieces of land, she was unclear on how the land in question was registered in the wife's name.
8. The wife in her evidence reiterated that the land was given to her by the husband's parents.

Analysis and determination

9. The main issue for determination is whether the land is matrimonial property. Section 6 of the *Matrimonial Property Act* defines matrimonial property as:-
 - ' (a) The matrimonial home or homes
 - (b) Household goods and effects in the matrimonial home or houses or
 - (c) Any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.'
10. Further, section 7 of the *Matrimonial Property Act* provides that:-
 - ' Subject to section 6(3), ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition, and shall be divided between the spouses if they divorce or their marriage is otherwise dissolved.'
11. The land in question cannot be categorized as matrimonial home because there is no evidence that the husband and wife and their children resided thereof as a matrimonial home. Nor is it the case of the husband that the land was jointly owned or acquired during the subsistence of the marriage. The husband contends, and this is also confirmed by the wife, that the land was given to the wife by the husband's mother. The divergence in their evidence arises in that the husband's case is that the land would have been given to him by his mother but for the policy of Nyakinyua company which forbids its land to be registered in man's names. The wife, in her pleadings posed a very pertinent question: that is, why did the husband's mother not register the land in the names of her daughters but rather, gave it to the wife? That question was not responded to by the husband.
12. Further, I find contradiction in the written statement of the husband compared to the oral evidence adduced. The husband stated in his statement in regard to that land, that:-
 - ' The shares after my mother's death was registered in my sister's name MWN later we agreed that she transfer the share due to me to my 1st wife's name. That is how the respondent came to be registered in respect of the land.'
13. The aforesaid sister of the husband testified before court and in her evidence she did not state that the land was transferred to her name at any time.
14. Having received the parties' evidence, I find the evidence of the wife more credible than that of the husband. There is definitely no evidence adduced proving that the land is matrimonial property. The husband on being cross examined affirmed that he and his wife did not settle on the land as family.



15. The more I consider the evidence adduced by the husband, the more I find that his real claim is that the land, that half of it, is held by the wife in trust for him. That being the finding of this court, this court is of the view that it has no jurisdiction to entertain this claim. The jurisdiction for that claim belongs to the Environment and Land Court: see article 162(2) of the Constitution.

16. In my judgment, the case by the husband lacks merit. Accordingly, this case is dismissed with costs.

JUDGMENT DATED AND DELIVERED AT KIAMBU THIS 22ND DAY OF SEPTEMBER, 2022.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Mourice

For Plaintiff: - Ms Waithera Mwangi

For Defendant: - Ms Mugo H/B Karanja Kanyiri

JUDGMENT delivered virtually.

MARY KASANGO

JUDGE

