



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL SUIT NO. 3 OF 2019**

**JMD.....APPLICANT**

**AND**

**JFD.....RESPONDENT**

**RULING**

1. The Applicant moved this court by way of a plaint against the Respondent seeking various orders including:

- a. A declaration setting aside the pre-nuptial agreement concluded in France on 24<sup>th</sup> June, 2008.
- b. A declaration that property located at 4 avenue Bourdaloue France being the matrimonial home of the parties go to the Applicant.
- c. Access to L'ejumeau Lasay Sur Croisne France.
- d. ½ share of Falcon property.
- e. Use of US assets.
- f. Return of household goods.
- g. ½ share of properties acquired during subsistence of marriage and are in the defendant's name.

2. On the 22<sup>nd</sup> of February 2019 the Applicant moved court pursuant to **Order 40 rules 1,4, 10(1)(a) and 11, Order 51 rule 1** of the **Civil Procedure Rules, Section 1A, 1B, 3 & 3A** of the **Civil Procedure Rules, Section 6** and 17 of the **Matrimonial Property Act** for the following orders:

- the defendant/Respondent by himself, agents, servants and or proxies be restrained from interfering in any manner with matrimonial property pending hearing and determination of the suit.
- other orders are spent.

3. The application was based on grounds that the applicant is likely to suffer irreparable loss and damage unless the defendant/Respondent is restrained.

4. The application was objected to by way of Preliminary Objection and a replying affidavit.

5. This ruling is subject of the Preliminary objection raised on grounds that the parties entered into a nuptial agreement dated 24<sup>th</sup> June 1974 which stipulates that the applicable law in case of distribution of matrimonial property is ....law and this .... The jurisdiction of the Kenyan law secondly, the properties, subject matter are located in foreign jurisdiction, the Mawe Mbili limited is not matrimonial property is a separate legal entity from its directors and shareholders, and therefore a matrimonial cause cannot be used to oust a minority share holder.

6. A preliminary point as espoused in the famous case of **Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors (1909) EA 696** consists of a point of law which has been pleaded on which raises clear implications out of pleadings and which if argued as a preliminary point may dispose of a suit. A preliminary point ought to raise a pure point of law which is argued on the assumption that all the

facts pleaded by the other side are correct.

7. The argument that the prenuptial agreement outs the jurisdiction of this court has been disputed. Secondly on the jurisdiction of this court the issue of domicile of the parties is key. Thirdly evidence will have to be led on the Mawe Mbili property. The applicants seek a declaration that the shares held by the respondent are held in trust for her. Lastly the applicants seek to set aside the prenuptial agreement.

8. Based on the above it is my considered opinion that the Preliminary Objection does not raise pure points of law. The same must fail. This matter can only be fairly determined at a full hearing.

**SIGNED DATED** and **DELIVERED** in open court this **20<sup>TH</sup>** day of **FEBRUARY, 2020**.

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**ALI-ARONI**

**JUDGE**