



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MATRIMONIAL PROPERTY CAUSE NO.21 OF 2016

MWG.....APPLICANT

VERSUS

RGK.....RESPONDENT

JUDGMENT

1. The Applicant approached this court through originating summons dated 2nd August 2016 where she claims entitlement to matrimonial property and sought determination as to whether she is entitled to half share of parcel of land measuring 0.2026 Ha to be excised from L.R.No.XXXX /X, X & X Bahati/Wendo BlockX/(Muchina Farm).
2. Further that the respondent is holding it in trust for the applicant and upon finding the above to the affirmative the court to consider whether the said parcel be divided and original owner one **JM** be directed to execute transfer instruments in favour of the applicant for the said portion.
3. In response, the respondent filed replying affidavit dated 12th August 2016.
4. In her oral testimony the applicant stated that she got married to the respondent in January 1982 and was blessed with 4 children namely: **J M G, SCG, DNG** and **J M G**She stated that they separated in July 1998. She said at the time they lived together, they lived in her mother in law's land in Bahati.
5. Applicant stated that while living with the respondent, they both did casual jobs and were able to purchase land measuring half an acre from **SM**. She said they purchase the land in 1994 but started ploughing it in 1995. She said title deed for the parcel of land has not been issued but has beacons and is No.43 in the register of **M Farm**. She produced survey computation. She said they ploughed the land for 2 years and the respondent's name is in the register. She said they both contributed for the purchase of the land. She urged the court to allow them to share the said parcel of land. She stated that they attempted out of court settlement but it failed.
6. On cross-examination, the applicant denied allegation that they were given money to purchase land by her mother in law. She also denied that respondent had given their 2 sons land that belonged to her mother in law. She said the land was kshs.35,000; that besides contributing from money earned from casual jobs, they also sold a radio to pay for the land.
7. On reexamination, applicant said the respondent took away land, which he had given her two sons. She also denied being given money for purchase of land by her mother in-law and stated that the register does not have her mother in-law's land.
8. The respondent adopted his replying affidavit as evidence. He admitted having married the applicant in 1982 and that she left their matrimonial home in 1998. He averred that the marriage was blessed with 2 children namely **JMG** born in 1982 and **SC** born in September 1990.
9. He averred that the applicant having left in 1998, he never fathered the 4th child born in the year 2005. He stated that they lived in his mother's land before the applicant left.
10. He denied having purchased land together with the applicant and it is not true that she cultivated the land. Respondent further averred that the applicant got married to another man and he cannot give her matrimonial land to settle with another man.
11. He denied living in the land acquired with two wives and stated that he lives in the land with his two children. He urged court to dismiss this application.

12. The respondent in his testimony said the casual jobs they were doing could not give them enough money to purchase land. He said they started paying for the land in 1997 and his mother paid the balance when she realized they had difficulties paying for the land. He said his mother paid kshs.33,000.

13. Respondent admitted that he has not given land to his two sons, as they have not gone to ask him for land. He said his mother left for him 1.5 acres. He said he married another wife 3 years ago. He said he wants the parcel of land herein to be left to him and his children.

14. On cross-examination by counsel for the applicant, the respondent said he has nothing to show that his mother gave him money to purchase land. He also confirmed that at the time he separated with the applicant, they had purchases the half-acre land herein. She said the applicant remarried and the 4th child was born after their separation. He said the child called **JMG** was born in the year 2005; he said his birth certificate has his name as father. He said the 3rd child **DNG** is deceased

15. On cross examination by court, the respondent stated that in 1998 when he separated with the applicant, the 3rd child had died and the applicant left with 2 sons and from 1998 up to now they have not lived together again. He said he had not known that the 4th child used his name as a father and that he first saw his birth certificate in court.

ANALYSIS AND DETERMINATION

16. From averments in pleadings filed and oral evidence adduced in court, there is no doubt that the applicant and respondent got married in 1982. They also both admit that they separated in 1998.

17. It is also not disputed that half acre parcel of land was purchased from M farm a share of JM and at the time of hearing this cause the title has not been issued to the respondent though the land has been surveyed and respondent's listed as one of the members who purchase land in M farm.

18. The applicant's evidence is that she contributed to purchase of the half acre land from earning from casual jobs which respondent also did. The respondent's evidence is that his mother gave him money to purchase the land. He talked of contribution of kshs 33,000 by his mother after realizing that they were struggling. He however did not deny that before getting which he failed to prove the applicant made contribution. He admitted they were earning together and both were doing casual jobs and struggling to pay for the land. Applicant said they even sold a radio to add onto the payment for land. There is no doubt that the applicant contributed either directly or indirectly to the purchase of the land. There is no prove that the respondent's mother made substantial contribution and even if she did, she was assisting birth applicant and respondent as a family. At the time they separated, the half-Acre had been purchased. It was purchased during subsistence of marriage, they were living together as a family and both struggling to maintain the family and purchase land. The two having separated, it would be fair to have the half acre equally shared between applicant and respondent.

19. FINAL ORDER

1. Half acre be excised from LR.NO.XXXX /X,X& X Bahati/Wendo Block 4/(M Farm) and be divided equally between applicant and respondent. Transfer instrument of half of the said parcel be executed in favour of the applicant.

2. Costs in the cause.

Judgment dated, signed and delivered via email at Nakuru

This 30th day of April 2020.

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RACHEL NGETICH

JUDGE

TO:

Njeri Njagua Advocates – Counsel for Applicant

Counsel for Respondent