



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

CIVIL CASE NO. 19 OF 2011 (OS)

CONSOLIDATED WITH

CIVIL CASE NO. 74 OF 2010 AT EMBU

IN THE MATTER OF AN APPLICATION UNDER SECTION 17 OF THE MARRIED WOMEN'S PROPERTY ACT, 1882

MMN.....APPELLANT

VERSUS

RNN.....RESPONDENT

JUDGMENT

1. The applicant MMN and the respondent RNN began to cohabit as wife and husband in January 1987. On 11th January 1992 the union was formalised at [particulars withheld] under the provisions of the **African Christian Marriage and Divorce Act**. The marriage was blessed with three children, born on 20th March 1988, 23rd March 1991 and 23rd March 1991, respectively. On 17th May 2018 the marriage was dissolved in **Divorce Cause No. 18 of 2017** at the Chief Magistrate's Court at Embu.

2. On 20th June 2011 the applicant filed this originating summons under **section 17** of the **Married Women's Property Act, 1882** (which she later amended to **section 7** of the **Matrimonial Property Act No. 49 of 2013**) seeking half share in each of the following properties:-

- (a) Kagaari/Kigaa/ [....];
- (b) Kagaari/Kigaa/[....];
- (c) Thika Municipality Block [....];
- (d) Ngandori/Kirigi/[....]; and
- (e) VehicleKBA [....].

Her case was that these were matrimonial properties acquired through their joint efforts, although (for Kagaari/Kigaa/[....], Kagaari/Kigaa/[....], Thika Municipality Block [....]and vehicle KBA[....] were registered in the name of the respondent. Ngandori/Kirigi/[....] was registered in her name, but still its acquisition, she said, was through joint efforts.

3. The respondent had sued the applicant in **HCCC No. 74 of 2010** at Embu claiming Ngandori/Kirigi/[....] which he said he had sent money to her to buy for him but which property she had fraudulently registered in her name. He was then working in Iraq. He wanted the land to be transferred to him from her. She defended the suit saying that she had contributed to the purchase and that they had agreed that the land be registered in her name. The land transaction was in 2008. The suit was consolidated with the present originating summons.

4. The respondent did not file a response to the originating summons, although he has always been represented. The evidence by the

applicant was tendered orally, following directions. It was not challenged.

5. The applicant's evidence was that the two lived together from 1987 to 2009 when they separated. She was always a primary schoolteacher and he was a soldier in the Kenya Navy. When they got married neither of them had any property. While married, they bought Kagaari/Kigaa/[....] which is about 0.16 Ha, and built a three bed-roomed timber house which became their matrimonial home. Each obtained a loan which they used to put up the house. Her father in-law assisted them with resources towards the building. They planted trees on the land which they would harvest after 5 years. Subsequently, they bought Kagaari/Kigaa/[....] from a neighbour. In 2008 they bought Ngandori/Kirigi/[....] for Kshs.660,000/= to which she contributed Kshs.300,000/= which she had saved. On it they put up a permanent house for Kshs.10,000,000/= again through contribution. She took loans to enable her contribution. The respondent was living outside the country. He would send money and she would supervise the construction, over and above her financial contribution. In 2013 the respondent demolished the house. In 2008 they bought the Premio vehicle KBA[....] for Kshs.750,000/= and in 2009 they bought Thika Municipality Block [....] measuring 0.0412 Ha. for Kshs.1.2 million from joint savings.

6. On top of the above, she stated, she exclusively brought up the children whom she always stayed with. She paid their school fees and provided for their upkeep.

7. The applicant exhibited her payslips, evidence of the various loans that she was taking from her Sacco and banking institutions. She sought a declaration that her contribution towards the acquisition and development of these properties was 50%. She prayed that the properties be each sold and the proceeds shared equally.

8. Under **section 6(1)** of the **Matrimonial Property Act**, the applicant has shown that the property above was acquired and developed when she was married to the respondent.

9. Under **section 2** of the **Act**, she testified about her financial contribution to the acquisition and development of the property. Further, she testified that she contributed by managing the home and bringing up the children while he was away. She educated and provided for the children. She supervised the constructions. She certainly had provided companionship.

10. Except for Ngandori/Kirigi/[....], the rest of the property was in the name of the respondent. Under **section 14** of the **Act**, there is a rebuttable presumption that the property was held in trust for her. She testified regarding her contribution, and the fact that the respondent held the property in trust for her. There was no rebuttal. I find that the property was held in trust for her. In the same way, she held Ngandori/Kirigi/[....] in trust for the respondent.

11. Based on the evidence of the applicant, I declare and determine that parcels Kagaari/Kigaa/ [....], Kagaari/Kigaa/[....], Thika Municipality Block [....], Ngandori/Kirigi/[....] and vehicle KBA[....], and all the developments on the land property, were acquired through joint efforts of the applicant and the respondent, and that the contribution of the applicant was 50% in each case. I order the termination of the trust on each property.

12. I order that each of those properties shall, within 30 days, be valued. Thereafter, the respondent shall, within 90 days, pay the applicant 50% of the value of each property. If he will not, the properties shall each be sold and the parties share the proceeds equally.

13. Costs shall be borne by the respondent.

DATED and DELIVERED electronically, following consent of the parties, at NAIROBI this 30TH day of APRIL 2020

A.O. MUCHELULE

JUDGE