



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

MATRIMONIAL CAUSE NO. 63 OF 2018 (O.S)

SWN.....APPLICANT

VERSUS

SMK.....RESPONDENT

JUDGEMENT

1. The Applicant SWN and the Respondent SMK married on the 6th day of December 2003 at the [Particulars withheld] Church in Nairobi.

With the not so unfamiliar rigors of marriage, the said marriage so solemnised was dissolved on 26th January 2016, after a period of 13 years.

2. It is claimed in the Originating summons and not disputed that the parties met while they pursued their undergraduate degree at the University of Nairobi in 1997.

From the evidence placed before Court, after marriage The applicant worked as a Management Trainee with [Particulars withheld] from 17th March 2003 to 31st August 2006, [Particulars withheld] Kenya 1st May 2008 to 16th October, 2010, Management Services and health 5th September, 2011 to 26th June, 2013.

On his part the Respondent worked at [Particulars withheld], and [Particulars withheld] Centre.

3. While living as husband and wife, the Applicant claims in 2005 they acquired with joint efforts **L.R. No. [xxxx]** as matrimonial property. She claims to have contributed hard cash towards acquisition of the same.

Further she stated, the Respondent left the larger financial burden of financing all household expenses, and school fees on her, and since the divorce has been receiving rental proceeds from the said house solely.

4. The Respondent categorically denies the above assertions and states that he solely paid the mortgage for the said property and continues to reside therein since the divorce. The Respondent further claims that contribution if any by the Applicant towards acquisition of the matrimonial property was fully paid for at the point of divorce.

To support his assertion the respondent placed before court statements for mortgage repayment for the years 2005-2009. The same has not been disputed by the Applicant.

5. The parties sired a child on the 6th of April 2009 who has remained in the custody of the applicant and whom the applicant claims to cater for substantially with negligible contribution from the respondent, facts the Respondent appears not to deny.

6. **Section 7 of The Matrimonial Property Act, 2013 stipulates that “ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition, and shall be divided between spouses if they divorce.”**

7. There is also created a rebuttable presumption in **Section 14** of the Act that if a property is acquired during subsistence of the marriage the property is held in trust by one spouse for the other.

8. In evidence one spouse states he paid the mortgage, the other one claims she was left to carry the larger burden of all household expenses

including paying the house help, school fees and a rent etc. and to have given in cash Kshs.200,000/- to the husband between 31st March, 2010 and 14th April 2010 and another Kshs.900,000/= on 16th April 2016. The evidence before court remains mainly as one spouses word against the other.

9. Common in any household where both spouses are in salaried employment household expenses are shared, more so where a couple have lived for close to 13th years. It is either agreed or duties call upon each one of them to play a part. Indeed, the family wealth is acquired either by direct monetary contribution or otherwise even in situations where one spouse only is in salaried employment. The Law recognises this situation.

10. Indeed, Section 2 of the Act states as follows:

“Contribution” means monetary and non-monetary contribution such as

(a) Domestic work and management of the matrimonial home.

(b) Child care

(c) Companionship etc.

11. I am prepared in this case with the evidence placed before me, where a part from payment of mortgage the Respondent does not deny that the applicant contributed towards other household expenses, child care, and companionship for several years, and has given support morally and financially towards the only child of the two, and where on her part the applicant produced evidence of some monetary contribution, to find that the property acquired during the subsistence of the marriage was acquired through joint effort and for the benefit of the two even though the same is registered in the name of the Respondent and that he holds the same in trust for the Applicant who has an equal interest in the same.

12. I therefore find and hold that the parties are entitled to 50-50% share in **L.R. No. [xxxx]**.

13. I direct that either party be at liberty to buy the other upon valuation of the property within 60 days of this judgement failure of which the property be sold and proceeds equally shared.

14. In the meantime, if the property is rented out the proceeds be henceforth shared on 50-50% basis or if occupied by one spouse, the one in occupation pays the other ½ share of rent in accordance with market value of rent pending sharing as directed.

14. Costs to the Applicant.

DATED, SIGNED and DELIVERED at NAIROBI this 17th DAY OF SEPTEMBER, 2020.

.....

ALI-ARONI

JUDGE