



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC. APPLICATION NO.175 OF 2018

IN THE MATTER OF THE ESTATE OF PATRICK WARUIRU MUKUI

TP.....APPLICANT

VERSUS

LEP.....RESPONDENT

RULING

1. The Application coming for consideration in this Ruling is dated 17th December, 2018 seeking the following prayers:

(i) THAT this application be certified as urgent and heard exparte in the first instance.

(ii) THAT the Property of the Marriage between the Applicant and the Respondent being Motor vehicle Registration No. KCG *J in the make of Toyota Alphard be preserved pending the filing and determination of the Divorce and Division of Matrimonial Property proceedings.**

(iii) An injunction is issued against the Respondent, her servant and/or agents from selling, transferring and/or renting the property of the Marriage being Toyota Alphard pending the filing and determination of the Divorce proceedings and division of Matrimonial Property between the parties.

2. The Application is supported by the Affidavit of TP (the Applicant) dated 18.12.2018 in which he has deposed that he is apprehensive that the Respondent is at the verge of selling and/or transferring the Motor vehicle Reg. KCG ***J to 3rd parties which would render the division of Matrimonial Property Proceedings before this Court on academic exercise.

3. The Applicant also stated in the Affidavit that he is in the process of instituting Divorce and Division of Matrimonial Properties proceedings before this Court.

4. The Respondent filed a Replying Affidavit dated 7.2.2019 in which she stated that the Motor vehicle the subject of this Application is registered in her name and she requires it for purposes of dropping and picking their two minors to school.

5. The parties filed Written Submissions which I have duly considered. I find that it is not in dispute that the Applicant and the Respondent are a married couple who separated in November 2018.

6. It is also not in dispute that the Couple has two minor Children who are staying with the Respondent.

7. I find that both the Applicant and the Respondent admit that the main contributor to the purchase of the vehicle is the mother of the Applicant who is an elderly lady living with the Applicant.

8. The issues for determination are as follows:

(i) Is Motor Vehicle Reg. No. KCG ***J Matrimonial Property?

(ii) Is the Applicant entitled to the orders he is seeking?

(iii) Who pays the Costs of this suit?

9. On the issue as to whether the Subject motor vehicle is Matrimonial Property, I find that both parties admit that it was purchased during the subsistence of the marriage and it therefore qualifies to be Matrimonial Property.

10. To determine whether the claim herein relates to matrimonial property or to the use, it is necessary to look at the law relating to matrimonial property. The Matrimonial Property Act 2013 is An Act of Parliament to provide for the rights and responsibilities of spouses in relation to matrimonial property and for connected purposes. The parties hereto are or were spouses at the time the suit property was acquired. Section 17 of the Act provides:

(1) A person may apply to a court for a declaration of rights to any property that is contested between that person and a spouse or a former spouse of the person.

(2) An application under subsection (1)—

(a) Shall be made in accordance with such procedure as may be prescribed;

(b) May be made as part of a petition in a matrimonial cause; and

(c) May be made notwithstanding that a petition has not been filed under any law relating to matrimonial causes.

11. I find that both parties admit that the main contributor to the acquisition of the motor vehicle is a 3rd party – the mother of the Applicant.

12. Although the Motor Vehicle is registered in the Respondent's name, it is matrimonial Property acquired during the subsistence of the marriage. The Respondent stated in her Affidavit that it is the mother of the Applicant who financed the purchase of the vehicle.

13. The Applicant stated in his Affidavit that he paid Ksh.700,000 and his mother contribution 1,400,000/-. I find that although the vehicle is registered in the Respondent's name, the same is Matrimonial Property which is subject to distribution upon resolution of the marriage.

14. On the issue as to whether the Applicant is entitled to the orders he is seeking in the Application dated 17.12.2018. I find that the answer is in the affirmative. The Applicant having established that the subject Motor Vehicle is matrimonial property he acquired during the subsistence of the marriage with financial assistance from his mother, it is in the interest of just and the same be preserved pending dissolution of the marriage.

15. In the case of **M MM v W N K [2019] eKLR** Hon Lady Justice Muigai held that **Section 17** of the **Matrimonial Property Act 2013** grants a party right to file an application before division of matrimonial property proceedings and provides:

(1) A person may apply to a court for a declaration of rights to any property that is contested between that person and a spouse or a former spouse of the person.

(2) An application under subsection (1)—

a) shall be made in accordance with such procedure as may be prescribed;

b) may be made as part of a petition in a matrimonial cause; and

c) may be made notwithstanding that a petition has not been filed under any law relating to matrimonial causes.

16. I also find that the Applicant has established the existence of grounds for grant of an injunction restraining the Respondent in whose name the vehicle is registered from depositing of the motor vehicle.

17. The Respondent asked the Court in her affidavits to give the vehicle to her to use for purposes of taking their minor children to school. I find that the said prayer is premature and the duty of the Court at the moment is not to divide but to preserve the property pending dissolution of the marriage and subsequent distribution of Matrimonial property.

18. I accordingly allow the Application dated 17.12.2018 in the following terms;

(i) THAT the Motor Vehicle Reg. No. KCG *** J make Toyota Alphard be and is hereby preserved pending intended Divorce and Division of Matrimonial Property proceedings by the Applicant.

(ii) An injunction be and is hereby issued against the Respondent, her servants and/or agents from selling, transferring and/or renting of Motor Vehicle Reg. No. KCG *** J Toyota Alphard pending filing and determination of Divorce proceedings and Division of Matrimonial Property proceedings between the parties.

(iii) I further direct that the Applicant files the intended proceedings within 30 days of this date.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 26 DAY OF APRIL, 2019

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI