



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MARSABIT

MATRIMONIAL NO.1 OF 2017

MAA.....PLAINTIFF

VERSUS

AR.....DEFENDANT

R U L I N G

The application dated 26.10.2019 seeks the following orders:-

- 1. That the honourable court be pleased to certify this matter as urgent and be heard exparte in the first instance.**
- 2. That pending the hearing and determination of this application there be an order and it is hereby ordered that the plaintiff/respondent should stop collecting rent from the property known as Plot [...] Marsabit town, which was declared by the honorable court on 23rd July 2018 not to be part of the matrimonial property.**
- 3. That pending the hearing and determination of this application there be an order and it is hereby ordered that the plaintiff/respondent should stop harassing, disturbing the tenants and or writing notice or making illegal and annoying paintings on the walls of the property known as Plot [...] Marsabit town which belongs to the family of the applicant and was declared by the honourable court on 23rd July 2018 not to be part of his matrimonial property.**
- 4. That upon the hearing and determination of this application there be an order and it is hereby ordered that the plaintiff/respondent vacates her former matrimonial house located on the property known as plot [...] Marsabit town and look for alternative accommodation since she is no longer the wife of the defendant/Applicant and failure of which the officer commanding Police Marsabit be and is hereby ordered to facilitate her eviction at her own cost.**
- 5. That upon the hearing and determination of this application there be an order and it is hereby ordered that the property known as plot number [...] be sold to a willing buyer and the proceeds of the sale be shared in the ratio of 30:70 as between the plaintiff/respondent and the defendant/applicant in line with the judgement of the court made on the 23rd July 2018.**
- 6. That upon the hearing and determination of this application there be an order and it is hereby ordered that the plaintiff/respondent and her servants, agents and or people acting on her behalf stopped from discussing, publishing and or telling members of the public the matter determined by this honourable court.**
- 7. That the respondent be condemned to pay the costs of this application.**

The application is supported by the applicant's affidavit sworn on 20th October, 2019. The respondent filed a replying affidavit sworn on 5th November 2019.

Mr. Wangila, Counsel for the applicant, submitted that the parties herein were divorced through Marsabit Kadhi divorce case number 10 of 2017. The respondent petitioned this Court for distribution of matrimonial property. A decree was issued giving the respondent 30% of plot number [...]. The respondent has refused to vacate the applicant's house yet she is divorced. This is to the matrimonial home. The respondent will be given her 30% share after the plot is sold. Posters have been paced on the property indicating that it is not for sale. This is intended to provoke the applicant. The applicant has hired an assistant who is taking care of the applicant's elderly mother together with the assistance of applicant's 3rd wife. Plot number [...] belonged to the applicant's father but was inherited through Nairobi Succession cause number 875 of 1991. No other beneficiary has claimed interest in that property. The respondent can as well buy out the applicant's 70% share. Plot No[...] is in the municipality and cannot be sub-divided.

Mr. Kiogora appeared for the respondent. Counsel maintain that plot No.[..] is yet to be inherited. The 3rd wife is the one collecting the rent from plot number[.]. There are other beneficiaries for plot number [..]. It is practical for plot number [..] to be sub-divided and the respondent be given her 30% share. The respondent is not ready for the plot to be sold.

I have read the two affidavits of the contesting parties. I did determine the dispute involving the property after the parties were divorced. The orders of this court in relation to plot number [..] is that it is part of the estate of the late Adichareh and is not matrimonial property. Since the applicant filed succession cause number 875 of 1991 and succeeded that property, he is at liberty to pursue anyone who is intermeddling with that property. I believe he is the administrator of his late father's estate. The respondent has categorically stated that she is not collecting rent from plot number [..]. I do find that since the respondent is not interested in collecting rent from plot number [..] the applicant is at liberty to either collect the rent himself or instruct someone to collect the rent on his behalf. Since the respondent is not collecting the rent and her position is that it is the 3rd wife collecting the rent I do find that prayers 2 and 3 can be granted although they were sought pending the hearing and determination of the application.

With regard to plot number[.], I see that the only dispute is whether the plot should be sold, whether each party should buy out the other party's share or whether it should be divided with the applicant taking his 70% share while the respondent take her 30% share. Whereas the applicant is of the view that that the plot should be sold as one unit and the proceeds be divided as per the court orders the respondent is against that proposal.

I have not seen the title documents for the plot to enable me make an informed decision in any of the above options. It will be premature for the court to grant prayer 5 without more information. Since the respondent is denying that she had put up posters telling members of the public that the property is not for sale, I do order that all the posters indicating that plot No. [..] is not for sale be removed. Prayer No.6 of the application is not clear and cannot be granted.

For purposes of finalizing the dispute I do determine the application in the following terms.

- 1. Prayers two (2), three (3), and four (4) are hereby granted.**
- 2. The parties to file a copy of the title deed or allotment letter for plot number [..] showing the size of the plot.**
- 3. Plot number [..] to be valued and a valuation report to be filed in court. The cost of the valuation to be paid from the rental income.**
- 4. The respondent is at liberty to visit her mother in law at plot number [..] but this does not extend to living on that plot as the same is not matrimonial property.**
- 5. Parties shall meet their own costs.**

Dated, Signed and Delivered at Marsabit this 26th day of November, 2019

S. CHITEMBWE

JUDGE