



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

HIGH COURT CIVIL NO 3 OF 2016

JCLAPPLICANT

VERSUS

JMNDEFENDANT

RULING

1. The applicant seeks an order of this court to have the bank statements of the respondent from his accounts with Barclays Bank of Kenya – Narok branch and Co-operative Bank – Narok branch and National Bank of Kenya, Narok branch for the period specified in her notice of motion. Her motion which is brought under Order 51 rule 1 of the 2010 Civil Procedure Rules, sections 3 and 3A of the Civil Procedure Act (Cap 21) Laws of Kenya is supported by the grounds set out on the notice of motion. The following are the major grounds in support of the motion.

1. That the parties are husband and wife whose marriage was solemnized under the Marriage Act (Cap 150) Laws of Kenya.
2. That the applicant was illegally evicted from her matrimonial home in collusion with the interested party and in the process she lost most of her documents including banking deposit slips.
3. That the respondent fraudulently transferred their matrimonial property to the interested party.
4. Finally, that there is need to demonstrate or contribution either directly or indirectly in acquiring their matrimonial properties.

2. The applicant has supported her application with a 14 paragraphs supporting affidavit. She has deponed to the following major matters.

1. She has deponed that after they solemnized their marriage, she lived with the respondent in Narok and they built their home on land reference No. Cis-mara/Oleleshwa/[particulars withheld].
2. She has also stated that pursuant to a court decree, which was fraudulently obtained in collusion with the interested party, she was evicted from her matrimonial home. As a result, the auctioneers who evicted her took away her personal items including her files and other documents together with the banking deposit slips.
3. She has also deponed that she needs the banking deposit slips to prove her ownership of the properties that are now the subject of the dispute.

3. The respondent has filed a 16 paragraphs replying affidavit in opposition to the application. In that affidavit, the respondent has deponed that the applicant in her affidavit in support of the originating summons did not allege that she deposited any monies in any of his bank accounts. He has further deponed that in his notice to the applicant to produce certain documents from October, 2016, the applicant failed to produce those documents and only came up with an explanation for failure to produce much later. He has further deponed that the allegedly lost documents during the eviction were not pleaded in the pleadings in Narok Chief Magistrate's court Civil Case No. 9/2014. He has also deponed that the applicant could have procured evidence of the loss timeously through the obtainment of a police abstract report.

4. Furthermore, the respondent has deponed that during the duration of their marriage, the parties maintained separate bank accounts, and for that reason her application lacks basis.

5. I have considered the rival affidavit evidence and submissions of both counsel. I find that the major issues for consideration is whether or not the applicant has made out a case for grant of the orders she is seeking. The second issue is as between the 2 parties, who should bear the costs of this application?

6. Resolution of disputes in our system is based on our adversarial system of litigation. It is upon each party to present evidence in his

possession. I find from the evidence that parties maintained separate bank accounts during their marriage. I also find that the loss of bank statements which the respondent is required to avail to the applicant through a court order were not pleaded in the Narok Chief Magistrate's court Civil case.

7. In the light of the foregoing findings, I find that the applicant has failed to make out a case for the grant of the orders sought.

8. As regards costs, I order that costs will be in cause.

9. The upshot of the foregoing is that the applicant's application is hereby dismissed in its entirety.

Ruling delivered in open court this 15th day of February, 2018 in the presence of Mr. Lukoritu for the applicant and in the absence of the Defendant and the interested party.

J. M. Bwonwonga

Judge

15/2/2018