

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL SUIT NO. 15 OF 2016 (OS)

B N N.....PLAINTIFF

VERSUS

S M N.....DEFENDANT

RULING

1. I am tasked with determining an application dated 18th September 2007. The applicant is C M I, who trades as [particulars withheld] Academy, and she is asking the court to order her joinder to the suit herein as an interested party. She is also seeking to be allowed to file papers in the matter.

2. She claims to have an interest in one of the assets the subject of the suit, that is to say LR No. [particulars withheld] (original number [particulars withheld]). The plaintiff in this suit seeks half share of the said property from the defendant. She says that the defendant had entered into a sale agreement on the same property with J K N on 27th November 2013. The sale price was Kshs. 4, 000, 000.00. The applicant herein says that she contributed a sum of Kshs. 2, 000, 000.00 to that purchase through Nairuti and Associates. She therefore asserts that she is also entitled to half share of that property. She has attached documents to support her contention.

3. The plaintiff has responded to the application through grounds of opposition filed herein on 21st September 2017. She says that the applicant is the mother of the defendant, and points to a conspiracy between her and the defendant to defeat her claim. There are other issues articulated in the said grounds that ought ideally to have been presented in affidavit form.

4. In a curious maneuver, the defendant filed an affidavit to respond to the grounds of opposition. Ideally an affidavit ought only to respond to averments made in affidavit form. I am not altogether surprised by the maneuver given that the plaintiff started off the exchange by making allegations in her grounds of opposition that ought to have been stated in affidavit form.

5. Directions were given on 1st February 2018 that the same be disposed of by way of written submissions. Both sides have complied and there are detailed written submissions on record. I have read through them, together with the authorities cited, and I have noted the points of law made in them.

6. The suit before me is for division of matrimonial property, premised on the Matrimonial Property Act of 2014. It should be a dispute between a husband and a wife or between former spouses. From the material before me, it would appear that the applicant, who seeks to be enjoined to the proceedings as an interested party, is the mother of the defendant, and she claims to have contributed to the acquisition of one of the assets. The defendant supports her contention.

7. Ideally, this suit should be a contest between spouses. The property in question is presumably registered in the name of the defendant. At the trial, one of the issues shall be the manner the same was acquired. I trust that both sides shall lead evidence on that. If the defendant contends that he did not provide all the money for the purchase and that some of it came from the applicant, his mother, then that is evidence he can provide at the trial. He can call his mother as a witness.

8. I am not persuaded that the applicant herein ought to be joined into these proceedings as interested party. She is not married to either of the parties hereto. If she is serious in asserting claim to the property, then she ought to initiate her own cause with the Environment and Land Court, which is the court constitutionally mandated to determine matters relating to title to property. The jurisdiction given to the High Court in a suit of this nature is limited to determining rights of spouses to property acquired during coverture.

9. The application dated 18th September 2007 is misconceived. I hereby dismiss the same. The plaintiff shall have costs thereof.

DATED, SIGNED and DELIVERED at NAIROBI this 27TH DAY OF JULY, 2018.

W. MUSYOKA

JUDGE