



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

Civil Case No. 49 Of 2012

IN THE MATTER OF THE MATRIMONIAL PROPERTY ACT 2003

NWK.....APPLICANT

VERSUS

JKW.....RESPONDENT

JUDGMENT

1. The applicant and the respondent started cohabiting as husband and wife in the year 1996. Their union was blessed with one issue born on 4th April 1998. They are not yet divorced but stopped living together sometimes in 2012.

2. On 28th August 2012 the applicant filed this originating summons under **Order 37 rule 7 & 8** of the **Civil Procedure Rules** and **Section 17** of the **Married Women's Property Act** seeking orders that:

a. the court be pleased to issue a declaration that the respondent and the applicant were married by reason of long cohabitation and had a child in the marriage;

b. the court be pleased to issue a declaration that the property Plot No. [xxxx] now L.R. No. [xxxx] IR [xxxx] with the improvements and the buildings thereon acquired by the applicant and the respondent during the marriage and registered in the name of the respondent was held in trust for the applicant;

c. in the alternative the court be pleased to declare that the property Plot No. [XXXX] now L.R. No. [XXXX] with the improvements and the buildings thereon acquired by the applicant and the respondent during the marriage and registered in the name of the respondent was owned jointly by the applicant and the respondent;

d. in the alternative an order do issue for the sale of Plot No. [XXXX] now L.R. No. [XXXX] and the proceeds thereof be shared between the parties on the basis of their contribution and or such criteria as this court may deem just;

e. an injunction do issue restraining the respondent, his servants and/or agents from in any manner altering, wasting, damaging and/or otherwise interfering with the matrimonial property named Plot No. [xxxx] now L.R. No. [xxxx] ;

f. an injunction do issue restraining the respondent, his servants and/or agents from evicting the applicant from Plot No. [xxxx] now L.R. No. [particulars withheld] or interfering with her possession thereof;

g. the applicant be longer bound to cohabit with the respondent; and

h. the respondent be condemned to pay the costs of the suit.

The application was based on the grounds that the said properties was acquired by the applicant and the respondent during the subsistence of their marriage but registered in the name of the respondent; and that the applicant had made substantial contribution to the acquisition and building of the property. The application was supported by the applicant's affidavit and witness statement both dated 27th August 2012.

3. The application was served on the respondent on 5th September 2012, 3rd May 2017 and on 16th June 2017. He did not enter appearance or file a response to the application. The application was therefore not opposed.

4. The matter proceeded by way of formal proof. The applicant testified and called one witness, a valuer John Karanja Kuria. It was the applicant's case that she met the respondent in 1990 and in 1996 he married her under Kikuyu customary law. He paid dowry to her parents in 2000. They lived together at [particulars withheld]. She was employed at [particulars withheld] but now works for [particulars withheld]. They were blessed with a son. Following disagreements, the couple stopped living together in 2012. They have not formally divorced.

5. The applicant's evidence was that in 2000 they began to look for a piece of land to buy. They found a piece of land at [particulars withheld]. It was plot No. [xxxx]. The purchase price was Kshs.525,000/=. They entered into agreement with the seller on 3rd May 2001 and paid Kshs.260,000/= deposit, the balance was to be paid in four instalments. She was the one who raised the deposit. Subsequently, they undertook the construction on the plot. She contributed towards the construction of this matrimonial home on the plot. She raised the money from her salary, loans, and reimbursement from college fees. She paid for a family vehicle of Ksh.500,00/=: among other things. The couple began to disagree and eventually separated. The property (now LR No. [xxxx]) measures 0.068 of an acre and is worth Kshs.30,000,000/=. When it was bought it was registered in the name of the respondent.

6. I find that there is sufficient evidence that the applicant and the respondent were lawfully married under Kikuyu customary law. I also find that the applicant contributed towards the acquisition and development of the property in question. This was matrimonial property because it was acquired during the subsistence of the marriage. I am alive to the fact that under **section 2 of the Matrimonial Property Act, 2013** contribution may be monetary and non-monetary. It includes domestic work and management of the matrimonial home; child care; companionship; management of family business or property; and farm work. In this case, contribution was both monetary and non-monetary. On the uncontroverted material placed before the court, I estimate the applicant's contribution to have been 50%.

7. Under **section 14(a)** of the **Act**, where matrimonial property is acquired during the marriage and is registered in the name of one spouse, there is rebuttable presumption that the property is held in trust for the other spouse. On the evidence, I find, and declare, that the respondent, who is registered in respect of plot [xxxx] now LR No. [xxxx] together with its developments, holds it in trust for himself and for the applicant in the portions of 50%:50%.

8. So that the property is protected, there shall be an order prohibiting the respondent from selling, transferring, charging, leasing or otherwise dealing with the same in a manner prejudicial to the interest of the applicant. This is until the marriage is dissolved, when each party will have own share.

9. Costs of the suit shall be borne by the respondent.

DATED and SIGNED at NAIROBI this 27TH day of NOVEMBER 2018.

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at NAIROBI this 29TH day of NOVEMBER 2018.

ALI-ARONI

JUDGE