



REPUBLIC OF KENYA

IN THE HUGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

CIVIL SUIT NO. 47 OF 2017(OS)

P W.....APPLICANT

VERSUS

J KRESPONDENT

JUDGMENT

1. This originating summons was served on the respondent who did not enter appearance or file a defence. It was therefore undefended cause.

2. The applicant and the respondent got married on 12th August 1972 at Mbotela Social Hall under **African Christian Marriage and Divorce Act (Cap 151)**. They got one child. The marriage was dissolved on 3rd November 2015 in **Murang'a Chief Magistrate's Court Divorce Cause No. 3 of 2012**.

3. The applicant sought a declaration that L.R. No. [particulars withheld], Nginda-Samar Block [particulars withheld] and Loc. [particulars withheld] were acquired and developed by her during the marriage and, although registered in the name of the respondent, were owned by her; and that they should be settled for her benefit.

4. During evidence, however, she stated that they bought the House (L.R. No. [particulars withheld]) in 1985/1986, and subsequently together bought Nginda-Samar Block [particulars withheld] and Loc. [particulars withheld]. All the property was registered in the name of the respondent because –

“we did not know we would divorce.”

She resides in the [particulars withheld] House. The respondent stays in Nginda-Samar property which was their rural home, but he has since remarried and stays there. She got the property valued. [particulars withheld] property is worth Kshs.7 million, Nginda-Samar is worth Kshs.5,200,000/= and Kaharo property is worth Kshs.1,200,000/=. She asked that she be allowed to keep the [particulars withheld] property and the respondent keeps the Nginda-Samar and the [particulars withheld] properties.

5. I was mindful that parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage (Article 45(3) of the Constitution). Under section 7 of the Matrimonial Property Act, 2013 ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its requisition, and shall be divided between the spouses if they divorce or their marriage is otherwise dissolved. Under **section 14** of the **Act** where matrimonial property is registered in the name of one spouse there is rebuttable presumption that he is holding it in trust for the other spouse. Lastly, under **section 2** of the **Act** contribution may be monetary or non-monetary.

6. The couple lived together for about 43 years. The properties were bought during the marriage. The applicant stated that she was doing business. She was sewing and knitting, and would make Kshs.1,500/= monthly. She took a loan of Kshs.165,000/= from Saving and Loan Kenya Ltd to use to buy the Uhuru property. She had 7 rooms in plot No. [particulars withheld] in Kiambu slums for which she sold for Kshs.200,000/= that she used to develop the property. She testified to the couple taking loan which they were using to buy and develop the properties.

7. The offer that the respondent takes the Nginda-Samar and Kaharo properties would be acknowledgement of the contribution by the respondent in the purchase and development of these family properties. I find that it is not clear how much each contributed towards the purchase and development.

8. Doing the best that I can, and considering the evidence and the values of the properties, I declare and direct that the applicant shall take, keep and own LR No. [particulars withheld] whereas the respondent shall take, keep and own Nginda-Samar Block particulars withheld] and Loc. [particulars withheld]. I declare that respondent holds LR No. [particulars withheld] Estate in trust for the applicant and terminate the trust. The Deputy Registrar shall execute all documents to effect the transfer of the [particulars withheld] Estate property to the applicant, if the respondent shall not voluntarily transfer the property within 30 days from the date of the judgment.

9. Each party shall bear own costs.

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

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at NAIROBI this 29TH NOVEMBER 2018.

ALI-ARONI

JUDGE