



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

CIVIL SUIT NO. 12 OF 2012

CAOAPPLICANT

VERSUS

WBO.....RESPONDENT

RULING

1. The applicant and the respondent got married in 1994. The marriage was blessed with three children. On 28th June 2012 they were formally divorced following proceedings in the subordinate court. The applicant filed originating summons for the declaration that the property acquired during their marriage was matrimonial property whose acquisition and development she had contributed to. The suit was heard and a determination made that all the property (movable and immovable) listed below with all buildings and developments thereon were acquired and developed by the joint funds and efforts of the parties during their marriage and were therefore jointly owned at 50%:50%:-

- a) plot No.C1-[particulars withheld] Kayole Service Scheme;
- b) plot No.C1-[particulars withheld] Kayole Service Scheme;
- c) Nairobi Block [particulars withheld] Komarock;
- d) plot No. [particulars withheld]-Umoja Inner-core Sector 2;
- e) motor vehicle KAK [particulars withheld];
- f) motor vehicle KAH [particulars withheld];
- g) motor vehicle KAU [particulars withheld];
- h) motor vehicle KAW [particulars withheld]; and
- i) motor vehicle KAS [particulars withheld].

2. Subsequently, it was ordered that the properties be sold and the proceeds shared equally. The applicant got the immovable properties valued as follows:-

- a) plot No.C1-[particulars withheld] Kayole Service Scheme Kshs.22,000,000/=;
- b) plot No.C1-[particulars withheld] Kayole Service Scheme Kshs.27,000,000/=;
- c) Nairobi Block [particulars withheld]Komarock Kshs.8,500,000/=; and
- d) plot No. [particulars withheld]-Umoja Inner-core Sector 2 Kshs.46,000,000/=;

The respondent did not dispute these values. The applicant tried to get the properties to be bought on the open market but the prices quoted were for too low. She alleged, and the respondent did not deny, that the latter sold all the vehicles and kept the proceeds. She further claimed, and it was not denied, that the immovable properties do receive monthly rents all of which the respondent keeps and/or uses. The respondent claimed that he uses the rents to pay fees for their children.

3. On 18th June 2018 the applicant filed the present application to review the orders that required the properties to be sold and the proceeds shared equally and in its place be an order to share the properties on the basis of 50%:50%. It was also sought that the respondent be ordered to pay for the valuations that she had carried out on the properties, and the money comes from the rental income; and that the Deputy Registrar be empowered to execute all necessary documents to transfer and vest the titles to the respective parties. Her case was that she had been unable to get good buyers for the properties as the offers received were too low; the respondent had been uncooperative in looking for buyers; the respondent was alone benefitting from the rents; she had alone footed the valuations; and the respondent had not accounted for the proceeds of the sale of the vehicles.

4. The respondent opposed the application. He stated that he was dissatisfied with the judgment and was appealing; the applicant had not made effort to sell the properties; the vehicles were not part of the judgment; and the rents were used to pay fees for the children. The respondent attacked the signature of the applicant on the supporting affidavit, but I find that nothing turns on that.

5. If the respondent is appealing, to which he is entitled, that fact alone cannot offer him stay of the execution of the judgment and decree herein. He has to seek stay, either here or in the Court of Appeal.

6. There is evidence of the applicant having valued the immovable properties and offering them for sale and receiving offers that were low. There was no corresponding effort on the part of the respondent to get offers in the market or by private treaty. I accept that the offers received, in relation to the values of the properties, were too low.

7. The vehicles were part of the judgment. They were to be sold and the proceeds shared equally. The respondent sold them but has not given the applicant a cent or accounted for the proceeds. As for the rents that have been so far collected, it was incumbent upon the respondent to state how much rent he collected per month, and how much of it went to school fees, if at all. The balance was to be shared equally between them.

8. I am aware of the provisions of **Order 45 rule 1** of the **Civil Procedure Rules**. It is clear to me that at the time of the judgment it was not known that the immovable properties were not going to attract their due value. Neither the applicant nor the respondent could have reasonably anticipated this. There is a decision that these properties constitute matrimonial property to which the parties are equally entitled. The court now knows the values of each. Given that the respondent sold the five vehicles and kept the money, and has been solely receiving rents from the houses for which he has not accounted, and that the applicant solely financed the valuations, I allow the application and vary the earlier orders and in their place there shall be an order that the applicant shall absolutely get plot No. [particulars withheld] – Umoja Innercore Section 2 and LR No. Nairobi Block [particulars withheld] Komarock, whereas the respondent shall absolutely get plot CI – [particulars withheld] Kayole Service Scheme and Plot No. No CI – [particulars withheld] Kayole Service Scheme. The Deputy Registrar is ordered to sign all the necessary land documents to effect this order.

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 28TH day of NOVEMBER 2018.

ALI-ARONI

JUDGE