



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 36 OF 2013 (OS)

IN THE MATTER OF SECTION 17 OF THE MARRIED WOMEN'S PROPERTY ACT (1882)

IN THE MATTER OF THE LAND REGISTRATION ACT 2012

AND

IN THE MATTER OF THE REGISTRATION ACT 2012

SB.....APPLICANT/RESPONDENT

VERSUS

GSB also known as

GSB 2.....RESPONDENT/APPLICANT

R U L I N G

1. In the Originating Summons filed on 28th February 2013 under certificate of urgency the Applicant wished the court to distribute matrimonial property between her and the Respondent. In the main both the Originating Summons and the Notice of Motion filed with it she prayed for a declaration that they held shares in the matrimonial property and that the property that is Nbi Block [Particulars Withheld] be sold and the proceeds be divided equally between them. In the interim she want the Respondent to be enjoined from wasting it.
2. In response the Respondent file a replying affidavit and grounds of opposition in which he denied the allegations of adultery and assault raised by the Applicant. He asserted that he had contributed majorly to the acquisition of the matrimonial property and was not averse to it being shared on a 50%-50% basis between them.
3. Four years down the line, without setting down the main petition for hearing and determination the Applicant filed a Notice to withdraw the whole suit.
4. Learned Counsel Mr. Goswami for the Respondent did not object to the withdrawal of the suit but prayed that the court do proceed to determine his client's share in the matrimonial property. For that reason he sought a hearing date, to which Mr. Khasian who appeared for the Applicant objected saying there was no longer any suit for which a hearing date could issue.
5. I am alive to the fact that the rules of procedure in matrimonial properties Act No. 49 of 2013 have not yet been developed. There are therefore no provisions to direct litigants whether they should file cross-petitions or Counter Claims in these matters. In essence a Respondent's affidavit in reply, forms the

counter claim if any, in such matters.

6. I am of the view however, that the suit having been withdrawn in its entirety and there being no counter-claim or cross-petition in the Originating Summons, there is no basis for the court to consider the defence on its own. For that reason the court directs that the Respondent should file a substantive suit if he wishes to pursue his claim.

It is so ordered.

SIGNED DATED and **DELIVERED** in open court this **25th day** of **July 2017**.

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L. A. ACHODE

JUDGE

In the Presence of:Counsel for the Applicant

In the Presence of:Counsel for the Respondent