



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL SUIT NO. 53 OF 2003 (OS)**

**J K K.....PLAINTIFF**

**VERSUS**

**J K G.....DEFENDANT**

**RULING**

1. On 2<sup>nd</sup> November 2006 a judgment was delivered herein in terms of a declaration that Nairobi/Block [Particulars Withheld] with buildings and developments erected thereon was jointly owned in equal shares by the plaintiff and the defendant.
2. The defendant has now moved the court by an application dated 12<sup>th</sup> September 2011 asking the court to order sale of Nairobi/Block [Particulars Withheld] and for the proceeds of sale to be shared equally between the parties. He also asks that the Deputy Registrar be authorized to execute the transfer documents and any other relevant documents to facilitate the sale. He also asks that the plaintiff be ordered to account for the rent collected from the said property since 2<sup>nd</sup> November 2006 when judgment was pronounced.
3. In the affidavit in support of the application, he avers that a decree was issued on 25<sup>th</sup> May 2009. He complains that the plaintiff thereafter managed the property exclusively by collecting all the rent without taking his share in the property into consideration contrary to the terms of the judgment. He mentions that it was their son in occupation and that the son pays rent. He avers that he wrote several letters asking the plaintiff to buy his half-share, but his offer was both rebuffed and ignored. He states that there was no possibility of reconciliation between the two, and therefore no possibility that the property could be managed jointly by the two of them, hence his application for sale thereof.
4. There is a response to the application by the plaintiff, by way of an affidavit sworn on 6<sup>th</sup> December 2009. She pleads that there was consent recorded in court on 21<sup>st</sup> July 2005, wherein she withdrew all her claims to the matrimonial property save for Nairobi/Block [Particulars Withheld]. She argues that her advocates then entered into that consent without her instructions, and pleads that the issue of the consent should be dealt with first. She avers that the said consent exposed her to irreparable loss.
5. Contemporaneously filed with the affidavit was a Motion dated 6<sup>th</sup> December 2011, wherein she sought the setting aside or review or discharge of the said consent orders. I heard the application dated 6<sup>th</sup> December 2011 and I dismissed it. .
6. Directions were given on 11<sup>th</sup> December 2014 that the application dated 12<sup>th</sup> September 2011 be disposed of by way of written submissions. The defendant complied, by filing detailed written

submissions. I have not seen from my record written submissions by the plaintiff. I have had occasion to read through the defendant's submissions, and to note the arguments made therein.

7. It is common ground that there is a judgment on record, which declares that the said property is owned in common by the parties hereto. The defendant complains that he has been excluded from the management of the property and does not receive his half-share of the rent collected by the plaintiff. He has also averred that the parties are unlikely or unable to agree on the management of the property, and it is on that basis that he asks the court to order sale of the property. I note that in her affidavit in response to the application the plaintiff has not addressed herself to the matters of fact set out in the defendant's supporting affidavit. She has instead chosen to confine herself to the matter of the consent. The pertinent issues raised by the defendant in his application and supporting affidavit have not been controverted.

8. Where parties are adjudged to own property equally and are subsequently unable to agree on its management, and one of the parties is not benefiting from the common ownership, justice would require that the common ownership be brought to an end by way of disposal by sale of the property and distribution of the proceeds as between the common owners.

9. The other issue raised regards the rents collected from the property since pronouncement of the judgment. It has not been denied that the plaintiff has been collecting rent all this while, and that she has not been giving the defendant his due share. There is no doubt a case for the plaintiff to account to the defendant of the rent she has collected since 2<sup>nd</sup> November 2006.

10. I am satisfied that the application dated 12<sup>th</sup> September 2011 has merit. I shall accordingly dispose of it in the following terms –

**(a) That I hereby order that Nairobi/Block [Particulars Withheld] be sold by private treaty and the proceeds of sale therefrom be shared equally between the plaintiff and the defendant;**

**(b) That the plaintiff shall prepare and place before the court within forty-five (45) days a full and accurate account of the rent that she has collected in respect of the said property between 2<sup>nd</sup> November 2006 and the date of the account;**

**(c) That the sharing of the proceeds of the sale to be carried out under (a) above shall await compliance with (b) above and any other or further orders as may be made subsequent to the filing of accounts;**

**(d) That the Deputy Registrar of the Family Division shall execute all or any documents relevant to the sale ordered in (a) above;**

**(e) That the matter shall be mentioned after forty-five (45) days for compliance; and**

**(f) That the defendant shall have the costs of the application.**

**DATED, SIGNED and DELIVERED at NAIROBI this 29<sup>TH</sup> DAY OF SEPTEMBER, 2017.**

**W. MUSYOKA**

**JUDGE**