



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
CIVIL SUIT 71 OF 2011
(ELC DIVISION 204 OF 2011)

A W M.....PETITIONER

VERSUS

P G M.....RESPONDENT

JUDGMENT

PLEADINGS

By an Application filed on 10th May 2011 the Applicant sought from the Environment and Land Division (ELC) of the High Court the orders for severance of title land parcel number NAIROBI/BLOCK *[particulars withheld]* and title KJD KITENGELA/ *[particulars withheld]* jointly owned by herself and former husband the Respondent.

The application is based on the following grounds as set out in the supporting affidavit;

The Petitioner and Respondents were married under Kikuyu customary law in 1980.They later solemnized their marriage in 1986under the African Christian Marriage and Divorce Act (repealed) as evidenced by the marriage certificate attached to the application.

During the subsistence of the marriage; the Petitioner and Respondent had 3 children of the marriage namely; E W (married) J M and C W who live with her mother. They also acquired properties among them the suit properties; NAIROBI/BLOCK *[particulars withheld]* and KJD KITENGELA/ *[particulars withheld]*

The Petitioner and Respondent divorced on 14th January 2011 in **Divorce Cause 144 of 2006**.

The petitioner sought severance of the said property as the divorce proceedings terminated.

The respondent filed a Replying Affidavit on 13th December 2011 and confirmed he married the Petitioner in 1980 and later had a church wedding. With regard to the suit property he deposed that NAIROBI/ BLOCK *[particulars withheld]* was not acquired jointly. Instead, he acquired the property from his funds but registered the same in both their names, as it was a requirement from the Housing

Finance Company of Kenya financier that property is registered jointly with one's spouse. In 2000, again he expended his own funds to extend their home on the said property.

In 1997 he bought land KJD/ KITENGELA/ *[particulars withheld]* and registered it in his name, as it was his own investment, which he intended to keep for speculative purposes and subsequent disposal at a premium.

The Respondent attached copies of documents as proof of payments of the suit property. Letters from Housing Finance Company of Kenya (HFCK) on the mortgage of L.R. NAIROBI/ BLOCK/ *[particulars withheld]* HSE C *[particulars withheld]* UHURU GARDENS PHASE 1 marked **PGM2&3** the bank statements confirming mortgage deductions marked '**PGM5**'. The letter from his employer confirming deductions of the mortgage from his salary marked '**PMG6**'. On completion of mortgage payments, the Respondent's employer wrote to stop deductions from his salary by letter marked '**PGM7**'.

The Respondent further deposed that the Applicant did not contribute at all to the purchase of the properties. If she had income it was from drawings and withdrawals by the Applicant from running his Company *[particulars withheld]* ENTERPRISES LIMITED where he listed the Applicant as holding 24% shares and he retained 76% shares of the Company as shown in the Memorandum and Articles of Association attached as '**PGM9**'. The Respondent claims the suit property belongs wholly to him.

By a Supplementary Affidavit filed on 25th May 2012, the Petitioner reiterated that she contributed directly to the purchase of the suit property; the Respondent's salary was not enough for him to qualify for a mortgage, she took a loan of Ksh. 50,000/= and obtained a letter from her employer to help the Petitioner qualify for the mortgage from HFCK.

The Petitioner deposed that in 1996 with the Respondent they started a company *[particulars withheld]* ENTERPRISES LIMITED. She later resigned from formal employment as Sales & Service Manager at *[particulars withheld]* Company Limited and she worked fulltime in the Company and continued to do so without support from the Respondent.

In 2004, the Respondent transferred his shares to their eldest daughter on the ground that civil servants were being investigated and he did not want to be associated with the private Company.

The Company was fined by Kenya Revenue Authority (KRA) Ksh. 2,679,865/- for failure to pay VAT from 1998-2008. The Petitioner attached documents to confirm payments marked '**AWM**'.

The Petitioner deposed that the extension of their home in KJD KITENGELA/ *[particulars withheld]* was paid through funds from their Company that they jointly own. Documents confirming the payments are annexed as '**AWM-11.**'

The suit property KJD KITENGELA/ *[particulars withheld]* was also purchased from funds held by their joint Company. The Petitioner also obtained a loan from her women group and helped pay for purchase of the said land. The documents attached are '**AWMIV**'.

The Petitioner reiterated that the Respondent could not pay for suit property if she did not assist in payment of household bills; electricity, water, security, garbage collection and school fees. She attached receipts to show such payments marked as '**AWM V.**'

In her affidavit filed on 10th March 2014, the Petitioner deposed they started the said Company with the Respondent with startup capital of Ksh 50,000/- and she left employment from a computer Company and she was knowledgeable in design and paperwork in all types of stationary.

In 1995, she helped purchase motor vehicle Registration *[particulars withheld]* and she was deducted Ksh. 10,000/- each month. In 1996 she was paid Ksh. 250,000/- as terminal benefits. She gave the money to the Respondent who bought motor vehicle *[particulars withheld]* Nissan Sunny and registered it in his name. The Petitioner was left to run the Company alone as the Respondent left her for one E whom they

started another Company called **[particulars withheld]** Limited. She struggled to pay penalties to KRA. The Company settled utility bills, school fees and helped to buy household furniture and goods.

The Respondent filed his witness statement on 14th May 2013 outlined in detail the process of payment through mortgage from HFCK of the property KJD KITENGELA/ **[particulars withheld]**. The Respondent deposed that he spent Ksh. 750,000/- on extension of their home and included a living area, kitchen and general facelift. He bought household effects and replaced those they got after their wedding. The Respondent accused the Petitioner of disposing assorted items that belonged to him and demanded to be paid for the said items.

The Respondent confirmed payment for the suit property KJD KITENGELA/ **[particulars withheld]** through direct payments to the sellers City Women Development Group at Ksh. 300,000/= and later registered the land in his name. He admitted to paying for the Petitioner's Plots in Embakasi Ranch.

With regard to the Joint Company **[particulars withheld]** ENTERPRISES LIMITED it was started in 1992 with startup capital of KSH1m. In 1998 he went to Dubai and bought motor vehicle parts as stock for the business. As the business grew he purchased motor vehicles to deliver goods.

The Respondent does not want to share any of the matrimonial property with the Petitioner, as she owes him Ksh. 313,000/- of his goods she disposed off. He also demands profits from the joint company on prorate basis at an estimate of Ksh. 15.6 m for 13 years.

The Respondent deposed that the Petitioner was and is cruel to him to date and therefore she is not entitled to anything at all from his property.

The Petitioner stated that she has not been cruel or bothered the Respondent. He left the matrimonial home in 2001 bought another house in South C and had another family.

Now he is back to their home and wants to be a bother. She wants to have the matrimonial home wholly, the Company and half of the shamba.

HEARING

The hearing commenced on 5th February 2015 and started *denovo* from the Previous Court's proceedings. During the *interpartes* hearing the Petitioner repeated more or less what evidence and facts as are outlined in the pleadings filed in Court.

The Respondent also testified and repeated the evidence and facts in his pleadings especially the witness statement filed on 14th May 2014.

The daughter to both Petitioner and Respondent E W testified that the document for transfer of shares of the family business Company, **[particulars withheld]** ENTERPRISES LIMITED; the Respondent transferred his shares to her in 2004 he signed and she signed the document. It was a legitimate and not fraudulent transfer. However, she conceded that the Respondent was not paid the value of the shares transferred to their daughter. She did not think it necessary as it is a family business but the payment could be considered.

SUBMISSIONS

The Petitioner filed submissions on 7th May 2015 and in summary urged the Court as follows;

- a. **The matter was filed in the ELC Division of the High Court and transferred to Family Division of the High Court**
- b. **It is a matter brought under the Married Women Property 1882 (repealed) and now captured under the Matrimonial Property Act of 2013**

- c. The issue for determination is whether the Petitioner contributed to the acquisition of the matrimonial home L.R.Block *[particulars withheld]* and KJD/Kitengela/ *[particulars withheld]*
- d. If so, she contributed to acquisition of matrimonial property, then what is her share?
- e. The Petitioner relied on Article 45(3) of the Constitution 2010 that prescribes equal rights to married persons at the time of marriage, during and at the dissolution of marriage.
- f. The Petitioner relied on the following cases;
- g. MCN vs AWM 2013 eKLR
- h. A N W vs J P N V G both on applicability of the Constitution 2010 and Matrimonial Causes Act of 2013 retrospectively.
- i. The Petitioner relied on Sections 2, 7, & 14(a) & (b) of the

Matrimonial Causes Act of 2013 to buttress equality as envisaged in the Constitution with regard to division of matrimonial property.

- j. The petitioner relied on Section 93 (2) of the Land Registration Act 2012 that recognizes direct and indirect contribution of the spouse to the acquisition of property
- k. The Petitioner relied on International instruments by virtue of Article 2(5) Constitution 2010 Article 16 (1) of the Universal Declaration of Human Rights & Article 7 (d) of the Protocol to the African Charter on Human and Peoples' Rights' on the Rights of Women In Africa.

The Respondent filed submissions on 25th May 2015 and in a nutshell stated the following;

- a. That the Petitioner filed the application in ELC Division of the High Court and relied on Section 104 of the RLA (repealed) and Section 3A of the CPR
- b. Relying on the case of SAMUEL KAMAU MACHARIA & ANOTHER vs KCB & 2 OTHERS [2012] eKLR on the question of the Court's jurisdiction, the Petitioner did not invoke the Court's jurisdiction and therefore this Court has to down its tools.
- c. The Constitution 2010 is not applicable as judgment in the divorce proceedings was delivered on 23rd February 2010 before the Constitution was promulgated in August 2010.
- d. Therefore the law cannot apply retrospectively and the Matrimonial Causes Act 2013 is also not applicable as provided in Section 23 of the Interpretation and General Provisions Act Cap 2.
- e. The Applicable law on division of matrimonial property should be *Echaria vs Echaria 2007 eKLR* whose ratio is that a wife is entitled to a share of the property registered in the name of the husband if she proves contribution towards acquisition of the property.
- f. The Respondent relied on the case of *Burns vs Burns [1984] 1All ER 244* that where there is substantial contribution by a woman of the family expenses and the house was purchased on mortgage, her contribution is indirectly transferrable to the acquisition of the house.....
- g. The Respondent indicated that there is the mischief rule in not automatically awarding 50% each to each spouse in division of matrimonial property as it would not take into account the conduct of parties and intentions as they get into the marriage.
- h. This Court cannot distribute property registered a Company that is within the purview of the Commercial Division of the High Court.

ISSUES

1. Does this Court have jurisdiction to hear and determine the instant matter?
2. What law is applicable; Married Women's Property Act 1882 (repealed) or Constitution 2010, Matrimonial Property Act 2013 and Land Registration Act 2012?
3. Did the Petitioner contribute to acquisition of the suit properties NAIROBI/ BLOCK *[particulars withheld]* & KJD KITENGELA / *[particulars withheld]* & *[particulars withheld]* ENTERPRISES?
4. What share is each party entitled to?

ANALYSIS & DETERMINATION

With regard to the 1st issue the Respondent contends that the Petitioner brought the Application under **Section 104 of Registered Land Act (repealed)** in the Environment and Land Division of the High Court in **Court File 204 of 2011**. On 15th December 2011 the matter was transferred to the Family Court. The Petitioner did not amend or regularize the pleadings. Therefore according to the Respondent the Petitioner did not invoke this Court's jurisdiction.

The court record confirms that the pleadings from ELC division of the High Court were not amended to conform to the jurisdiction of the Family Court.

However, this Court is one of unlimited original jurisdiction in both civil and criminal matters as prescribed under **Article 165 1 (a) of the Constitution 2010**.

Secondly, the Divisions of the High Court are mainly for administrative expediency of disposal of cases. They are all Courts of competent and equal jurisdiction but administratively housed separately to deal with specific specialized areas of law.

Thirdly, in **Civil Suit 21 of 2012 (NBI HIGH COURT) I.M.N vs D.M.K**; in similar circumstances where the Plaintiff filed the matter in ELC Division of the High Court; seeking a declaration that certain properties were matrimonial property. The defendant raised a Preliminary objection that the suit was incompetent before the Court as it was filed by Plaintiff instead of by Originating summons so as to invoke **Section 17 of the Married Women Act 1882 (repealed)** The Plaintiff indicated the suit was properly before Court as there were other legal regimes applicable other than the **Married Women Property Act**; There was **Land Registration Act 2012**. The Court observed;

“In this Court's evaluation, the suit filed by the Plaintiff is competently before this Court. The argument presented by the Defendant in support of the Preliminary objection raised was attractive and may have been applicable before the new regime ushered in by Constitution 2010 came into effect.

[It] was a radical document, which placed upon the Court the responsibility of determining cases on the basis of its merits and not to be beholden by procedural technicalities. This was aptly captured by Article 159 (2) of the Constitution.”

Similarly in the present case the fact of not invoking the relevant sections of the law in invoking the jurisdiction of this Court is not fatal to hearing and determining the matter on the facts and evidence presented by both parties. More so is the fact that through out the proceedings all parties were so clear on the orders sought from the Court and the relevant law attendant to obtaining redress. Therefore, the matter is properly before Court and the Petitioner in further pleadings and oral testimony has invoked the jurisdiction of this Court.

With regard to the 3rd issue which is the applicable law to the division of matrimonial property; specifically the suit properties **L.R. NAIROBI/ BLOCK/ [particulars withheld] HSE C [particulars withheld] UHURU GARDENS PHASE 1 & KJD KITENGELA/ [particulars withheld]**.

The Respondent claims that the judgment on dissolution of marriage was 23rd February 2010 before promulgation of Constitution 2010 and therefore the law cannot apply retrospectively. The appropriate legislation should be the **Married Women Property Act 1882 (repealed)** as it was in force at the time the matter for divorce was proceeding.

This Court has found on this issue wanting; on the one hand there are authorities that confirm law does not operate retrospectively unless there is a clause to this effect. Other authorities span the position that the Constitution 2010 is supreme law of the land that integrates the Bill of Rights, which are inherent, unalienable and inalienable to all persons.

In ***U.M.M vs. I. M.M 2014 eKLR HIGH COURT BUSIA CIVIL SUIT 39 of 2012***; the Judge observed relying on Court of Appeal decision ***A N W vs J P N G***;

“Having found that the right to equality as inherent and infeasible to all human beings, it matters not that the cause of action accrued before the current Constitutional dispensation. We therefore do not find favour with The Respondent’s submissions to the contrary”.

This Court is persuaded by the latest position; the Constitution 2010 upon promulgation was not intended to apply selectively but going forward to be the guiding principle.

The Constitution 2010 is applicable in this case.

In CIVIL APPEAL 127 of 2011;

A N W vs J P N V G; the Court of Appeal observed

“Article 45 (3) of Constitution stipulates that parties to a marriage are entitled to equal rights at the time of marriage during marriage and at dissolution of marriage.....it arguably extends to matrimonial property and is a constitutional statement of the principle that marital property is shared 50-50 in the event marriage ends. However, pursuant to Article 68 Parliament was obligated to pass laws to recognize and protect matrimonial property particularly the matrimonial home. Although this yet to happen, we hope that in fullness of time Parliament will rise to the occasion and enact such law.....Pending such enactment, we are none the less of the considered view that the Bill of Rights in our Constitution can be invoked to meet the exigencies of the day.

In MCN vs AWM [2013] eKLR ELC 208 of 2012 the Judge stated;

“Essentially the foregoing legal provisions seek to change the position previously prevailing which the Court considered the level of financial contribution made by each spouse deciding what percentage to apportion them. The legal provision in force now requires this Court to apply the principle of equality instead. This Court is duty bound to share the suit property equally between the Plaintiff and the defendant.”

In the instant case therefore although the judgment of the Court on divorce was on 23rd February 2010; the dissolution of marriage became final on 14th January 2011 when the decree nisi became absolute and consequently this matter was filed on 10th June 2011. So the matter was filed after the promulgation of the Constitution 2010. But even if we go by the Respondent’s assertion that judgment was on 23rd February 2010 before the Constitution the above authorities speak to the importance of the Constitution as supreme law governing all persons’ rights from August 2010 going forward.

This Court concedes that the **Matrimonial Property Act 2013** came into effect after the matter was filed and therefore it shall not be applicable.

The applicable law being **Married Women Property Act 1882** (repealed) was applied in the case of **DAVID ENOS NZIOKA vs PURITY NYAMBURA NZIOKA CIVIL APPEAL 226 of 2012**; The Appellant filed an originating summons under Section 17 of the Married Women’s Property Act against the Respondent that it be declared the properties acquired by joint funds and efforts

[During the subsistence of the marriage] be sold and proceeds shared between the Appellant and the Respondent.

The Respondent had been an employee of Barclays Bank for 11years prior to her marriage to the Appellant; she earned a salary from her employer; it is against the security of her earnings that she secured a staff home loan and purchased property Title No. Nairobi Block 32/390 House No 133 High

view estate, which subsequently became the matrimonial home; she has solely met the mortgage installment repayments on the suit property. Further she took a further loan of Ksh 1,000,000 for purposes of making renovations on the suit property.

The law applicable was held to be the **Married Women Property Act 1882 (repealed)** as the matter was filed before the advent of the Matrimonial Property Act 2013.

The Trial Court observed;

“These arguments lead to the inevitable conclusion that although in this case, the specific contribution of each spouse the purchase of the 2 properties has not been established, they had a clear intention that the 2 [properties] were meant to be matrimonial property and thus jointly owned.....My finding on this matter is that the 2 properties are jointly owned by the parties herein in equal shares.”

The Trial Court awarded the Respondent the matrimonial home exclusively due to the best interests of the children who are dependent on the mother and reside in the matrimonial home.

The Court of Appeal confirmed relying on the cases of *Kamore vs Kamore and Kivuitu vs Kivuitu* that where property is registered in joint names of the disputants it meant that each party owns an undivided share therein; the law assumes that such property is held by the parties in equal shares. The Court of Appeal reversed the award to have the matrimonial home valued and costs borne by the parties equally. The aggregate value of the suit properties be apportioned equally between the Appellant and the Respondent.

Despite sole contribution to monthly mortgage payments by the Respondent for the matrimonial home by registration of both parties it was to be shared by both parties equally.

Therefore whether the Court relies on **Section 45 (3) of the Constitution or Section 17 of the Married Women’s Property Act 1882 (repealed)** the net effect is the same. This Court will rely on **Constitution 2010**.

In the instant case the Respondent confirmed he obtained a mortgage from HFCK to purchase the matrimonial home. He attached bank statements and letters from the banker and his employer confirming mortgage payments for the house. The Matrimonial home is registered in joint names of the Applicant and Respondent as per the Copy of the Title Attached to the Applicant’s application.

Although the Applicant did not make direct mortgage payments, she contributed indirectly as she was engaged in formal employment as Sales and Service Manager with *[particulars withheld]* Company.

They started *[particulars withheld]* Enterprises in 1992 and registered the business as a Company in 1996. The business grew and required personalized attention. She left formal employment she was paid terminal dues Ksh. 250,000/- which she gave the Respondent and he bought a motor vehicle and registered in his name. The Applicant worked in the business on a day-to-day basis for 13 years while the Respondent continued in formal employment in Kenya Pipeline. The Petitioner /Applicant settled utility bills water, electricity, security, garbage disposal charges and school fees as shown by the attached receipts in the petitioner’s bundle of documents filed on 18th May, 2015

It is curious to note that she was not paid any salary for working at the family business. The Respondent claimed he paid her 25,000/= for upkeep of the home.

Therefore her labour and productivity at the family business and settling of household expenses and purchasing household goods indirectly contributed to the purchase of the home. The Petitioner shouldered part of the financial obligations to enable the Respondent affords to pay monthly mortgage payments.

The Respondent claimed he used a further KSH 750,000/= to renovate the family home in 2000. There

was no evidence of the said sum. However, the Petitioner attached receipts of building materials paid from the family business in the Petitioner's list of documents filed on 18th May, 2015. The totality of the evidence is that the Respondent purchased the matrimonial home through direct contribution and the Petitioner through indirect contribution of labour and productivity of the family business and undertaking some of the household expenses.

Therefore by virtue of **Article 45 (3) of the Constitution** the Matrimonial home **L.R. NAIROBI/ BLOCK [particulars withheld] HSE C [particulars withheld] UHURU GARDENS PHASE 1** belongs to both the petitioner and Respondent in equal shares. It is also registered in the name of Petitioner and Respondent and the intention was to share the property equally.

The 2nd property is **KJD KITENGELA/ [particulars withheld]** which as per the attached copy of the title it is registered in the name of P G M as the sole registered owner. The Respondent purchased the suit property as evidenced by receipts attached in his name as follows;

- a) 6th November 1995 Ksh. 50,000/=
- b) 24th November 1995 Ksh. 100000/-
- c) 25th January 1996 Ksh. 150,000/-

The Respondent attached bank statements of **[particulars withheld] ENTERPRISES LIMITED** account with Standard Chartered Bank in the Petitioner's bundle of documents filed on 18th May, 2015 which confirm identical amount of money as withdrawals on the said dates clearly confirming the Respondent paid for the suit property from the family business funds where the Petitioner worked daily and was a co director. Therefore contrary to the Respondents assertion that the Petitioner did not contribute to the acquisition of the land the allegation is not borne out by evidence. Once again the Petitioner expended time in the business sacrificed her employment to devote her efforts in growth of the business and she took up household expenses. She made indirect contribution to the purchase of the land more so that the funds the Respondent paid with were from their joint Company.

In the case of ***GISSING vs GISSING [1970]***

Where the property is registered in the name of the husband alone and the wife paid for furniture and contributed to household expenses; The Court considered if there was common intention and if not whether a trust maybe implied in the absence of common intention. Lord Reid stated as follows;

"I take a common case where husband and wife agreed when acquiring the family home that the wife should make financial contribution and the title to the house was taken in the husband's name. That contribution could take one or other of two forms; the wife might pay part of the deposit and instalments or she might relive her husband of some of his obligation for example paying household bills, so as to enable him pay for the house."

.....

"it is not disputed that a man can become a trustee without making a declaration of trust or evincing any intention to become a trustee. The facts may impose on him an implied, constructive or resulting trust. Why does the fact that he has agreed to accept these contributions from his wife not impose such a trust on him?"

In the instant case the fact of the Respondent being the sole registered owner of the suit property does not make him absolute owner as there is evidence that he paid for the land parcel through funds from the joint family business where both Petitioner and Respondent are Co directors. Secondly the Petitioner ran the business and helped with the household bills. Therefore she indirectly contributed to the purchase of the land. He held the suit property in trust for the Petitioner's half share.

Lastly, with regard to the joint family business *[particulars withheld]* ENTERPRISES LIMITED; it was registered on 11th July 1996 as per the certificate of incorporation. The Memorandum and Articles of Association indicate the Petitioner and Respondent as business executives and each with shares; the Respondent 3,800 and Petitioner 1,800 shares respectively. Later in 2004 as evidenced by the transfer of shares form attached to the Petitioner's affidavit, the Respondent transferred shares to their first-born daughter E W. The Letters from the Registrar of Companies of 17th December 2004 and 18th August 2011 confirm the directors as the Petitioner and daughter. The Respondent vehemently denied this fact and claimed it was forgery. Yet when put to task he could not explain why he had not reported the matter to the Police. The said daughter testified in Court and was subjected to cross-examination. This Court is satisfied that he voluntarily transferred his shares. The only issue remaining is that he was not paid the share value for the transfer of those shares, which is within his prerogative to pursue from their Petitioner and their daughters.

This Court finds that its jurisdiction in division of matrimonial property does not include division of properties and shares held in a Company except to declare the ownership of shares as per the official documents of the Company.

In *MUTHEMBWA VS MUTHEMBWA* C.A. NO 74 OF 2001[2002] *MEREKA VS MEREKA* C.A. No 236 of 2001 *MUNGAI vs MUNGAI* [1007]

“all confirm that under the Married Women Property Act Section 17 allows only for declaration of shareholding and not division of property registered in a company or rights of a director or shareholder.”

The Respondent is at liberty to file an appropriate case under the Companies Act in the Commercial Division of the High Court to pursue the buyout and profits due to him.

With regard to claim of payment of confiscated household goods by the Petitioner belonging to the Respondent as outlined in his witness statement; the claim was not pleaded in the affidavits and was not substantiated by evidence that these items existed, were purchased by the Respondent, the Petitioner disposed of them and the actual value is at Ksh 313,000/- The claim is denied.

FINAL ORDERS

Therefore this Court orders as follows;

- 1. A declaration is hereby made that L.R. NAIROBI/ BLOCK/ *[particulars withheld]* HSE C *[particulars withheld]* UHURU GARDENS PHASE 1 is joint property of the Petitioner A W M AND P G M in equal shares.**
- 2. A declaration is hereby made that KJD KITENGELA/ *[particulars withheld]* registered in the name of P G M is held for himself and in trust for A W M half share for her indirect contribution to the acquisition of the property. They shall share equally.**
- 3. The Petitioner and Respondent shall within 120 days engage valuers or valuer to value the 2 properties file the valuation report(s) in Court with a view to apportioning equally upon sale the aggregate value of the 2 properties.**
- 4. The parties may consider buying out one's half share interest upon valuation prior to the sale of both properties.**
- 5. The Court directs that the suit property both the Petitioner and Respondent hold KJD KITENGELA/ *[particulars withheld]* jointly and in equal shares.**
- 6. A declaration that *[particulars withheld]* ENTERPRISES LIMITED shares remain held by A W M 1,800 SHARES AND E W 3,800 SHARES until the matter is ventilated in the appropriate forum; Commercial Division on any claim of a buyout profits or any matter attendant to the Companies Act.**
- 7. Each party is at liberty to apply.**
- 8. Each party to bear its own costs**

**DELIVERED AND SIGNED IN OPEN COURT AT NAIROBI THIS 15TH DAY OF FEBRUARY,
2016**

M.W. MUIGAI

JUDGE

In the presence of:

Mr. Gicheru for the Petitioner.