



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

MATRIMONIAL CAUSE NO. 14 OF 2016

E L G APPLICANT/PLAINTIFF

VERSUS

N K W RESPONDENT/DEFENDANT

JUDGEMENT

The plaintiff and the defendant got married on 18th February, 2013 before the District Commissioner's office, Malindi. The marriage was dissolved on 19.11.2015. A decree absolute was issued on 6th June, 2016. The plaintiff filed the originating summons on 25th July, 2016. She seeks the following orders: -

- 1. THAT this Honourable Court do grant that, the moveable and immovable property situated on land portion number [Particulars withheld] acquired by the applicant before the celebration of the marriage is owned by the applicant.***
- 2. THAT the respondent be restrained from alienating and or encumbering or evicting or in any other way disposing of the said property known as land portion number [Particulars withheld] pending the hearing and determination of the suit.***
- 3. THAT this Honourable Court be pleased to grant such further or other reliefs as may be just and expedient.***
- 4. THAT the respondent be condemned to pay costs of this application and incidental thereto.***

The defendant was served with the summons but opted not to respond or attend court during the hearing. This matter proceeded ex-parte. The plaintiff's evidence is that before the two got married, she bought a portion of plot number [Particulars withheld] for Kshs.500,000/=. She built ten (10) rooms and two bath rooms on the plot. The project cost her about 38,000 (Euros) inclusive of the cost of the land. Since then, the defendant has been collecting the rent and has excluded the plaintiff from the property.

It is the plaintiff's evidence that the defendant has been engaging the services of rent collection agents and alleges that the property is his. The plaintiff has been settling all the water and electricity bills.

PW2, DAVID KINGI KOMBE testified that he has known the plaintiff for over sixteen (16) years. He was sent by the plaintiff to look for a plot together with the defendant. They were given Kshs.500,000/=. They got the plot and purchased it. The plaintiff thereafter entered into a contract with GILBERT MAITHA for the construction of the house on the plot. Gilbert later abandoned the project. PW2 took

over the project and all the money for the construction came from the plaintiff.

The issue for determination is whether the property in dispute belongs to the plaintiff. According to the plaintiff, she bought the land and built the house thereon before they got married. The plaintiff produced the construction agreement between herself and GILBERT MAITHA drawn on 29th July, 2012. The agreement was entered into before the solemnization of the marriage on 18th February, 2013. According to the construction agreement, the construction cost was Kshs.2,500,000/=. The agreement confirms that the contractor had received a deposit of Kshs.250,000/= from the plaintiff.

Although the defendant signed the contract, the deposit was paid by the plaintiff as per the contract. It is the evidence of PW2, DAVID KINGI KOMBE that the contractor did not continue with the works and he took over the completion of the project. All the funds came from the plaintiff. It is PW2's evidence that the defendant did not contribute any money towards the project.

Section 5 of the Matrimonial Property Act No. 49 of 2013 states as follows: -

“Subject to section 6, the interest of any person in any immovable or movable property acquired or inherited before marriage shall not form part of the matrimonial property.”

The property herein was developed before the marriage and does not form part of the matrimonial property. It is exclusively owned by the plaintiff. Although the property could have been registered in the defendant's names, the defendant did not make any contribution towards its acquisition. It is the plaintiff's evidence that the defendant took the title document. The water bills are in the defendant's names. That does not mean that the property belongs to the defendant.

From the evidence herein, it is proved that the property was solely developed by the plaintiff. It is her own property. The plaintiff has proved her claim as per her originating summons dated 22nd June, 2016. The summons are granted as prayed. The plaintiff should be registered as the proprietor of the portion of land originally forming part of Plot Number [Part where her house stands. Each party to meet their own costs.

Dated and delivered in Malindi this 21st day of November, 2016.

S.J. CHITEMBWE

JUDGE