



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
DIVORCE CAUSE NO. 122 OF 2008

BETWEEN

J W N T.....PETITIONER

AND

C J T.....RESPONDENT

JUDGEMENT

1. The marriage between the parties in this matter was dissolved on 28th February 2012. The only outstanding issue is settlement of the former wife's property. The parties had agreed on 8th December 2011 that that issue was to be referred to mediation to be supervised by the court.

2. It was however reported on 27th September 2013 that the parties were unable to agree on the matter. It was directed that that issue be disposed of by *viva voce* evidence. Further directions were given on 6th February 2014 that the parties exchange the documents that they intended to rely on at the hearing. On 29th May 2014, they were directed to file written statements.

3. The petitioner in her petition pleads that during the marriage the parties acquired the property she listed in paragraph 13 of the petition. The property listed includes the Loresho LR Hse. **[particulars withheld]**, household goods and motor vehicles **[particulars withheld]** (Land Cruiser) and **[particulars withheld]** (Toyota Ceres). She prays that upon dissolution of the marriage the said property be shared equally between the parties.

4. The respondent in reply asserts that the landed property Nairobi/Block **[particulars withheld]** situate at **[particulars withheld]** Crescent, Loresho, Nairobi belongs to him as it is registered in her sole name. He states that he bought it for Kshs. 12, 000, 000.00, with a loan from the United Nations Federal Credit Union (UNFCU) and the rest from his inheritance. He asserts that the property does not form part of the matrimonial property of the parties. He also states that the petitioner did not participate in the acquisition of the household goods.

5. In her rejoinder the petitioner avers that Nairobi/Block **[particulars withheld]** situate at **[particulars withheld]** Crescent is matrimonial property for she contributed to its acquisition as she is the one who suggested to the respondent that he should buy a house for the family, she is the one who sourced the house and she supported the family as the respondent worked to finance the purchase. She adds that the family lived in the house. She further asserts that the household property was acquired jointly by the parties.

6. The petitioner's statement was filed in court on 10th June 2014. She states that she was not working and was a house wife for the entire period of the marriage and concedes that it was in fact the respondent who was working and who was catering for everything for the family. Her role was limited to caring for the children, the respondent and the household. She mentions ventures that she got into unsuccessfully. She indicates that she did not contribute much to the acquisition of the assets financially or monetarily, but indirectly through her duties as housewife and mother.

7. The respondent's statement is dated 22nd October 2014. It was filed in court the same day. He details how he worked for various organisations in Kenya and elsewhere, culminating in his current employment with the **[particulars withheld]**. He also details how he met the petitioner at a nightclub and how they ended up getting married. He particularises the children's education and his role in it, as well as in the children's other needs. He discloses that he owns a semi-detached house in the United Kingdom, which he co-owns with a sister-in-law as the same was inherited from his parents. Nairobi/Block **[particulars withheld]** situate at **[particulars withheld]** Crescent was acquired in 2004 for Kshs 12, 000, 000.0. He states that he is the one alone who raised the purchase price, from money realised from sale of investments he had inherited from his parents and a loan he got from UNFCU. The loan is repaid by way of deductions from his salary. There are two cars with UNEP registration numbers; one is used by the respondent while the other is used by the respondent.

8. The parties testified on 11th December 2014. Both adopted their statements and were cross-examined on the contents of the said statements. They gave vent to the allegations made in their pleadings as well as in the statements.

9. There are also bundles of documents on record filed by the parties to support their respective cases.

10. In cases of this nature the principal issues for consideration are – (a) whether the parties to the dispute were married to each other at the material time, (b) whether the property in issue was acquired during the matrimony of the parties, (c) whether the claimant contributed to the said acquisition, (d) and, if so, in what proportions, and (e) how is the property to be divided as between the parties..

11. The fact that there was a marriage between the parties is not in dispute. The parties initially cohabited as from 1985, before they solemnised their union at the civil registry at Mombasa on 18th April 2000. That marriage was dissolved by the court in this cause on 28th February 2012.

12. Matrimonial property is defined in section 6 of the Matrimonial Property Act, Act No. 49 of 2013, to mean –

a. The matrimonial home or homes;

b. The household goods and effects in the matrimonial home or homes; or

c. Any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.

13. There is a qualification to this definition in section 5 of the Matrimonial Property Act, to the effect that interests acquired by any person in property acquired or inherited before marriage does not form part of matrimonial property.

14. It would appear that there is no dispute that there was property acquired during coverture, that is during the currency of the marriage. Nairobi/Block **[particulars withheld]** situate at **[particulars withheld]** Crescent, Loresho was acquired in 2003/2004. The UK property was inherited from the parents of the respondent, although there is no indication as to the date of the inheritance. There are no details as to when the cars were bought.

15. Whatever was acquired during coverture qualifies to be matrimonial property, especially if it was

acquired specifically for the purpose of the family. Inherited property is excluded however, unless the claimant has improved the same.

16. Nairobi/Block *[particulars withheld]* situate at *[particulars withheld]* Crescent, Loresho was bought during coverture and it would appear that it was meant to be the family home, for that is where the parties and their children resided. This was for all purposes the matrimonial home for the parties. Since it was acquired by the husband during matrimony for the use of the family the same formed part of the matrimonial property that should be available for distribution in this matter. The UK property being the respondent's inheritance from his parents does not form part of the matrimonial property, and more so as the petitioner does not claim to have in any way improved the property. Evidence was not led as to when the motor vehicles were acquired. I would assume that they are fairly recent models; at least they must have been acquired after 2000. The respondent says that one vehicle was manufactured in 1997, while the other was made in 2003. The household goods in the matrimonial home must have been acquired for utility by the family. The same is matrimonial property regardless of who acquired it.

17. The matter concerning the money held in bank accounts of the respondent has not been brought out clearly. The petitioner has not in her pleadings dealt with the matter, but she had attached bank statements on the respondent's various bank accounts. The respondent himself has addressed the issue in his statement. To the extent that the money in the bank accounts of the respondent was not pleaded by the petitioner, I will hold that it is not to be considered in this matter at all for it has not been properly placed me.

18. From what I have said above, the property that is for division therefore is Nairobi/Block *[particulars withheld]* situate at *[particulars withheld]* Crescent, Loresho, the two motor vehicles and the household goods.

19. The next matter for consideration is whether the claimant contributed to the acquisition of the said assets. The determination of this question will assist the court decide on how the matrimonial property is to be shared out between the parties.

20. Section 7 of the Matrimonial Property Act provides that the ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition. Section 7 must be read together with section 14 of the Act, which provides that where matrimonial property is acquired during marriage in the name of one spouse, there shall be a rebuttable presumption that the property is held in trust for the other spouse.

21. It is plainly clear that the petitioner did not contribute financially or monetarily to the acquisition of the said assets or at any rate her financial contribution was minimal. She was a housewife and it would appear that she hardly engaged in any income generating activity. This is common ground. It was the respondent who worked and therefore directly acquired the house, the motor vehicles and the household goods.

22. Does that mean that the property therefore solely belongs to him? Not quite. The law is notorious that contribution to acquisition of property can be direct or indirect. The petitioner pleads that her contribution to the acquisition of the property was indirect. She took care of the home, the children and the respondent. While she was busy at the home front, the respondent was busy at the workplace. She created an enabling environment for the respondent to raise the money necessary for the acquisitions in issue. She is no doubt entitled to a share of the matrimonial property going by the provisions of the law that I have cited above.

23. The only issue for me to determine is the proportion of her contribution. She seeks equal division. Would such division be right or fair in the circumstances? The respondent acquired the assets from money raised from various sources. He funded the domestic budget, catered for the children's education and medical care, among others. Can his contribution be treated as equal to that of the petitioner – running the home, caring for the respondent and children when they were younger. I find myself unable to hold that their respective contributions were equal. The respondent no doubt contributed more.

24. Regarding the matrimonial home, I note that part of the money for its acquisition was raised from the respondent's inheritance. He puts this at 26%. The rest he says came from a loan. Taking everything into account I hold that the petitioner is entitled to only 30% of the matrimonial home, being Nairobi/Block **[particulars withheld]** situate at **[particulars withheld]** Crescent, Loresho.

25. The parties each uses a particular car out of the two that are before me. I note that the Toyota Ceres registration mark and number **[particulars withheld]** has since been replaced with a Toyota Allion registration mark and number **[particulars withheld]**. The petitioner uses the Toyota Allion, while it is the respondent who has possession of the Landcruiser. Each shall be entitled to the car that they are currently using, that is to say the petitioner shall have the Toyota Allion registration mark and number **[particulars withheld]**, while the respondent shall keep the Toyota Landcruiser registration mark and number **[particulars withheld]**. The household goods in the matrimonial home acquired during coverture shall be shared equally.

26. In the end I do hereby make the following final orders: -

- a. That the property known as Nairobi/Block **[particulars withheld]** situate at **[particulars withheld]** Crescent, Loresho, shall be shared at the ratio of 30:70, with the petitioner taking the 30% thereof;
- b. That the said property shall be valued in the next forty-five (45) days and thereafter the respondent shall have the option of buying out the petitioner, in default of which the property shall be sold and the proceeds shared out in the above-stated ratio of 30:70;
- c. That the motor vehicles shall be shared as follows – to the petitioner the Toyota Allion registration mark and number **[particulars withheld]** and to the respondent the Toyota Landcruiser registration mark and number **[particulars withheld]**;
- d. That the household goods shall be divided equally between the parties;
- e. That there shall be liberty to apply; and
- f. That the petitioner shall have costs of the suit.

DATED, SIGNED and DELIVERED at NAIROBI this 17th DAY OF April 2015.

W. MUSYOKA

JUDGE

In the presence of Mr. Karanja advocate for the petitioner.

In the presence of Mr. Gichamba advocate for the respondent.