



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**CIVIL SUIT NO.11 OF 2014 (O.S)**

**IN THE MATTER OF DIVISION OF MATRIMONIAL PROPERTY**

**AND**

**IN THE MATTER OF THE MATRIMONIAL PROPERTY ACT (2013)**

**P H S.....APPLICANT**

**VERSUS**

**S M R.....RESPONDENT**

**RULING**

1. The applicant and the respondent got married under Hindu customary law on 29<sup>th</sup> July 2005, and on 14<sup>th</sup> August 2007 the marriage was registered at the Registrar's office in Nairobi. The marriage was not blessed with any children. The couple got divorced in **HC Divorce Cause No. 5 of 2012**. The applicant filed this originating summons seeking the sharing of the matrimonial property. It was her case that the properties were gold jewellery that she was gifted during the marriage and the shares that had been invested in the respondent's name at the Nairobi Stock Exchange (NSE).
2. In regard to shares, the applicant made reference to a client statement obtained from Dyer and Blair Investment Bank **[particulars withheld]** showing that the shares were owned by the respondent up to 10<sup>th</sup> June 2011 when they were sold for Kshs.9,312,460/63 and the proceeds transferred to another account. She testified that this new account belonged to the respondent's father. The new account is **[particulars withheld]**. The respondent attacked this piece of evidence in several ways. First, that **[particulars withheld]** that is said to be his account was illegally obtained from Dyer and Blair Investment Bank when one considers bank/client confidentiality. He argued that the said statement was, in any case, a photocopy which was not legally being introduced in evidence, and that, in any case, it has not been certified to be the original. Secondly, that **[particulars withheld]** was his father's account which was being introduced without his or the bank's authority, and that it was not certified.
3. The applicant's position was that the respondent had in the replying affidavit admitted the fact that he had shares in his account which he had subsequently sold and transferred the proceeds to his father's account.
4. However, the respondent's case was that he had bought the shares before the marriage using money he had borrowed from his father, and that, he had subsequently sold the shares and refunded the money to his father. He denied that the shares were part of the matrimonial property. He denied the narration as contained in **[particulars withheld]** and **[particulars withheld]** both of which he said were illegally obtained.
5. **[particulars withheld]** and **[particulars withheld]** are photocopies and not originals, and were not made by the applicant or the respondent. They allegedly belong to Dyer & Blair Investment Bank who is not a party. They are not certified to be the true copies by the owner. They relate to accounts that do not belong to the applicant, and are subject of client/bank confidential

relationship. Whichever way one looks at them, they are not admissible.

**DATED at NAIROBI this 13<sup>th</sup> day of April 2015**

**A.O. MUCHELULE**

**JUDGE**

**DELIVERED at NAIROBI this 16<sup>th</sup> day of April 2015**

**W. MUSYOKA**

**JUDGE**