



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**CIVIL CASE NO. 41 OF 2008**

**UNDER SECTION 17 OF THE MARRIED WOMAN PROPERTY ACT, 1882**

**IN THE MATTER OF AN APPLICATION FOR DECLARATION OF PROPERTY RIGHTS**

**E A O .....PLAINTIFF**

**-VERSUS-**

**C O O .....DEFENDANT**

**RULING**

1. By a judgment dated 25<sup>th</sup> March 2013 Justice G.B.M. Kariuki as he then was after hearing the parties declared that the suit property **No. RUIRU/KIU/BLOCK [particulars withheld]** situated in Nairobi which is jointly registered in the names of the applicant and the respondent is owned in equal shares by the Applicant and Respondent.
2. That the suit property be sold and the proceeds thereof be apportioned equally between the parties providing that either is at liberty to buy out the other by paying the other half of the agreed market value of the property to be determined by a competent valuer agreed on by the parties and in the absence of agreement to be appointed by the court.
3. On the 8<sup>th</sup> of April 2013 the defendant filed an application to stay the execution of the said judgment and also sought the setting aside of the same. I note that this application has never been prosecuted to-date.
4. The applicant through a Notice of Motion filed on 8<sup>th</sup> May 2013 sought to have a valuer appointed by the Court. The said order was granted on 26<sup>th</sup> March 2015.
5. In compliance the applicant filed a valuation report from Mbindah & Company dated 28<sup>th</sup> April 2015 on residential property **No. RUIRU/KIU/BLOCK [particulars withheld]**, Kahawa Sukari Thika County as per the said report the property is valued at **Kshs. 15,012,500/-** while the respondent filed a valuation report from Interlink Real Estate on the said property and as per the said report the property is valued at Kshs. 12,000,000/-.
6. Today morning Mrs. Rashid for the applicant drew the courts attention to the two reports and also to a further affidavit filed by the applicant. She depones in the said affidavit that she has secured a loan with consolidated bank to purchase the said house where she resides with the children. Currently she is unemployed and the loan repayment have become difficult to manage that the

bank has given her a statutory notice of sale of the said property which is due to be sold at any time hence she is in dire need of finances and requests the court to expedite the process of sale of the Kahawa Sukari matrimonial home or alternatively the respondent to pay her half the value of the said home. Mrs. Rashid in her submissions in court has asked this court to enforce the judgment as it still stands and the obstacle that was the valuation report has now been undertaken.

7. The respondent though served did not attend court the judgment delivered on 25<sup>th</sup> March 2013 has neither been stayed nor set aside and the same is therefore enforceable. I therefore order that the valuation reports submitted be used to sell the matrimonial home as directed in the judgment dated 25<sup>th</sup> March 2013. Going as per the said valuation reports the property should fetch a sum of between 12 million and 15 million. Costs shall be in the costs.

Dated, signed and delivered this 25<sup>th</sup> day of *June* 2015.

**R. E. OUGO**

**JUDGE**

In the presence of:-

..... **For the Applicant**  
**For the Respondent**

.....

**M/s. Charity Court Clerk**