



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
CIVIL SUIT NO. 04 OF 2015 (O.S)
IN THE MATTER OF DIVISION OF MATRIMONIAL PROPERTY
BETWEEN
MN.....APPLICANT
VERSUS
LNK.....RESPONDENT
JUDGMENT

1. The Applicant filed the Originating summons dated 6th February 2015 under **section 17 of the Married Women's Properties Act (1882)** of England, seeking orders; *inter alia*
 - a. The court to declare that the Applicant acquired the properties during the marriage with the Respondent. The Applicant registered them in their joint names except for title No. KAJIADO/KITENGELA/[particulars withheld] which is registered in the Respondent's name only and the Applicant has elected to hand over to the Respondent;
 - b. The said property be shared on a ratio of 1:4 between the Respondent and the Applicant respectively for reasons that the applicant bought and acquired all the six parcels of land single handedly without any financial contributions at all by the respondent;
 - c. The court to declare all the furniture, furnishings and household goods in the matrimonial home, remain with the Respondent notwithstanding that the same were purchased by the Applicant through his sole efforts and funds.

2. In the affidavit in support of the summons, the Applicant averred that he married the Respondent on 30th October 2001 at the Registrar of Marriages Office in Nairobi as evidenced by the certificate of marriage attached as **MMN1**. There were no issues to the said marriage. He stated that during the subsistence of the said marriage, he single- handedly bought and acquired the below listed properties without any financial contribution from the Respondent; and that he had elected to let the Respondent retain the parcel TITLE NO.KAJIADO/KITENGELA/[particulars withheld] and all household furniture in the home. I do note that all the listed properties are registered in the joint names of the parties herein except TITLE NO.KAJIADO/KITENGELA/[particulars withheld] which is registered solely in the name of the respondent. The properties subject of this suit are:

- a. **TITLE NO.KAJIADO/KITENGELA/[particulars withheld]**
 - b. **TITLE NO. KAJIADO/KITENGELA/[particulars withheld]**
 - c. **TITLE NO. KAJIADO/KITENGELA/[particulars withheld]**
 - d. **TITLE NO. KAJIADO/KITENGELA/[particulars withheld]**
 - e. **TITLE NO. KAJIADO/KITENGELA/[particulars withheld]**
3. The Respondent despite being served did not enter appearance nor file a reply to the summons. This court directed that the matter heard *ex parte*. This summons was filed **under section 17 of the Married Women Properties Act-1882** the same ceased to apply in Kenya by virtue of **section 19 of the Matrimonial Property Act, 2013**, which commenced on 16th January 2014. The Originating Summons was filed on 6th February 2015, long after the Married Women Properties Act-1882 had been repealed. It has been stated that the mode of instituting a suit has to be in accordance with the law for a proper and just determination of the issues that arise therefrom and that where a party, whether intentionally or by mistake, moves the court contrary to the provisions of the law, the court may call upon such a party to move the court appropriately by nullifying what was filed contra-statute in the first place. A proper suit may be filed again. **(CYRIL J HAROO & ANOTHER -V- UCHUMI LIMITED & 3 OTHERS [2014] eKLR)**.
 4. If the Originating Summons were filed under subsisting law then and before hearing the law was repealed, then as in the case of **(TECLA MWAKE NYANGE VS MUTUKU KILEWE; CIVIL SUIT NO 37 OF 2013)** The Court would allow amendment, to bring the matter in dispute under the relevant applicable law and have the matter heard and determined on its merits. This court cannot therefore proceed to determine the issues herein as the matter has not been brought under the correct law, which is currently in operation.
 5. The division of matrimonial property is pursued once the parties in a marriage divorce. The applicant referred in his evidence to **Divorce Cause 130 of 2011**. It was not clear whether the matter was concluded and divorce granted or not. For this reason, the orders sought cannot be granted at this stage. The applicant ought to file the appropriate application under the present law. The application is dismissed with costs.

DATED DELIVERED AND SIGNED IN OPEN COURT AT NAIROBI THIS 27TH DAY OF OCTOBER, 2015

M.W.MUIGAI

JUDGE