



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
CIVIL CASE NO.9 OF 2014

P C.....APPLICANT/PLAINTIFF

VERSUS

J K K.....RESPONDENT/DEFENDANT

JUDGMENT

1. **P C** the Plaintiff and **J K K** the Defendant were joined together in a Civil Marriage on the 19th July, 1996 at the Waltham Forest U.K, PEXB1 is a certificate copy of an entry of Marriage issued on the 19th July, 1996.
2. The marriage was blessed with one issue. Its not indicated who has custody of this child. The family lived in the U.K and in Kericho County.
3. The Marriage over the years started experiencing marital problems and the Plaintiff filed a Divorce case no.2 of 2013 in the High Court at Kericho. A decree absolute produced as PEXB3 was issued to her.
4. On 29th April, 2014 the Plaintiff filed an Originating Summons dated 16th April, 2014 seeking half share in the following properties;
 - a) Motor Vehicle Registration No. **[particulars withheld]** Z Nissan Pick-up.
 - b) Motor Vehicle Registration NO. **[particulars withheld]** S ERF PRIME MOVER.
 - c) Motor Vehicle Registration **[particulars withheld]** N RENAULT LORRY/TRUCK.
 - d) Plot comprised in L.R. No. Kericho/Kapsuser/**[particulars withheld]**.
 - e) Plot No.**[particulars withheld]** Kericho Municipality.
 - f) All other properties in his name and or nominees whether within Kenya or any other Country were acquired by the joint funds and efforts of the Applicant and the Respondent and as such are owned jointly and in equal shares.
5. She claimed that she made substantial contribution to the acquisition of these matrimonial properties which were acquired during the subsistence of the marriage.

6. In her supporting affidavit she stated that when she got married in July 1996 both of them were working.
7. The Defendant was served with the Originating Summons and the Chamber Summons dated 3rd February but he did not enter appearance, file any response and/or appear in Court though served.
8. Directions were taken to the effect that the matter be disposed of by way of written submissions, based on the evidence before the Court. Mr. Orina for the Plaintiff did file the written submissions urging the court to grant the orders sought.
9. The 1st issue is whether the above properties were acquired during the subsistence of the marriage.

(i) Motor Vehicle Registration No. [particulars withheld] Z Nissan Pick-up.

The copy of records shows the status as at 28th March 2014. This was after the dissolution of the marriage. There is nothing to show when the ownership was vested in the Defendant.

(ii) Motor Vehicle Registration No. [particulars withheld] S ERF Prime Mover.

This one is owned by *[particulars withheld]* Limited which is not the Defendant herein. No connection has been drawn between the Defendant and the said Company,

(iii) Motor Vehicle Registration NO. [particulars withheld] N Renault Lorry/Truck.

No record was produced in respect of it.

(iv) Plot L.R. No. Kericho/Kapsuser/ [particulars withheld]

The entries on the certificate of search annexed show the entries to have been made before the two (2) got married. The owner is shown as T M who is not the Defendant. An affidavit by one S A C was annexed. Apparently its the Plaintiff's father who was giving her land. Its not clear how the defendant is connected to this.

(v) Plot No. [particulars withheld] Kericho Municipality .

There is no record to show that the plot is in the defendant's name.

(vi) All other properties in his name and or nominees.

No record was produced for this one.

10. As explained under each of these properties it is clear that the Plaintiff has not shown to the satisfaction of this Court that the aforementioned properties are in the names of the Defendant Save for the motor vehicle registration no. *[particulars withheld]* Z.
11. The vehicle *[particulars withheld]* Z has not been shown to have been purchased during the subsistence of the marriage. **Section 107 to 109** of the **Evidence Act** deal with the burden of proof. They provide as follows;

Section 107

1. "Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person."

Section 108

"The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side."

Section 109

"The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."

These provisions show that he who alleges a fact must prove it.

It was the duty of the Plaintiff to prove her allegations whether or not the defendant entered appearance and/or file a defence.

The court does not issue orders in vain. It must be satisfied that a case has been made out against the defendant.

12.The Plaintiff alleged that Plot No. Kericho Municipality *[particulars withheld]* House No. *[particulars withheld]* Mortgage was sold by the Defendant. Besides her averment in the supporting affidavit there is no single piece of evidence to support that, allegation.

13.After evaluation of the evidence before me I find that the Plaintiff has not proved her case on a balance of probabilities.

I therefore dismiss it. There shall be no order as to costs.

DELIVERED, SIGNED AND DATED THIS 21ST DAY OF DECEMBER, 2015.

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H.I.ONG'UDI

JUDGE