

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 419 OF 2010 (OS)

IN THE MATTER OF SECTION 17 OF THE MARRIED WOMENS PROPERTY ACT (1882)

LEONARD BRANDENBERG.....PLAINTIFF

VERSUS

ANN ATEMO MAKOBA.....DEFENDANT

RULING

Before court is the Notice of Motion dated 5th December, 2013 seeking the following orders:

“2. THAT an eviction order in respect of land

reference number MN/1/1656 House in Nyali Links Road do issue as against the respondent and which eviction/order is to be implemented and or carried out by Sure Auctioneers of Mombasa.

3. THAT the OCS Nyali police station do

oversee the eviction and execution of the order by providing security.

4. THAT the respondent do account for motor

vehicle registration numbers KAU 494K Rav 4, Toyota KAP 425V, Toyota Touring and KBA 053C Harrier Toyota in her possession forming part of the matrimonial property and which she has refused to release or give accounts.”

The parties to this suit are a couple who are divorced. The plaintiff filed this suit seeking division of their matrimonial property. On 29th June, 2012 **Hon. Muriithi Judge** made orders directing that the matrimonial property be sold and the proceeds shared equally between the two. One of the properties subject to this sale order was LR Number MN/1/1656 a house in Links Road in Nyali currently occupied by the defendant. Throughout the process of sale the defendant has been uncooperative necessitating court and police intervention to have the property accessed for valuation and viewing. The defendant even declined to execute the sale documents, which were eventually executed by the Deputy Registrar upon orders of the High Court. At every stage of the process the defendant has been properly served with notice but has adamantly refused to engage counsel to file any responses or to appear in court. I have personally examined the process-server on two occasions. He confirms that the defendant is well known to him as he has gone to the suit premises regularly to serve her with documents pertaining to this case. I am satisfied that the defendant was properly served with notice of this particular application for eviction as per the affidavit of service dated 23rd December, 2013 and filed in court on 21st January, 2014.

Once again the defendant has declined to make any response to the application. It is clear to me that the defendant has made a conscious decision **not** to participate in the court process. It is further clear that she hopes to frustrate the court-ordered sale of the property by refusing to give up vacant possession of the property. The petitioner is an elderly ailing man who is in Switzerland for treatment and requires the funds to facilitate this treatment. The defendant has not taken any steps to appeal against the sale order or

to challenge the same in court. The court will not allow the respondent to frustrate court orders in this manner. Court orders must be obeyed and are enforceable. I am satisfied that the defendant had notice of these proceedings and more particularly that she was properly served and has had over one month's notice of present application. The decision not to take any action is her own personal choice. The application is unopposed. The buyer must be given vacant possession of the property. I therefore grant prayers (2) and (3) of the Notice of Motion. Prayer (4) was not argued before me and I will make no orders on the same. I further direct that the defendant's half-share of the purchase price be deposited in court awaiting her collection of the same. Costs in the cause.

Dated and delivered in Mombasa this 29th day of January, 2014.

M. ODERO

JUDGE

Read in open court

No appearance by counsel