



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

DIVORCE CAUSE NO. 2 OF 2002

P W K.....PETITIONER

VERSUS

J KG.....RESPONDENT

JUDGMENT

By the Petition dated 24th October 2002, **P W K** the Petitioner herein, prayed for the following orders:

- i. **Dissolution of her marriage with J K G, the Respondent herein.**
- ii. **Custody of the minor.**
- iii. **The Respondent to pay school fees of all the children.**
- iv. **Division of Matrimonial Property.**

By his judgment delivered on 7th May 2009, Hon. Justice Makhandia, as he then was, granted prayer (i). Prayers (ii) and (iii) appear to have been overtaken by events since the minor has reached the age of majority while the children have all completed their education courtesy of the Respondent taking up his parental responsibility in that responsibility.

Upon delivery of his judgment, Justice Makhandia invited the parties to tender evidence in respect of the division of Matrimonial Properties. The Petitioner presented all her evidence before Mr. Justice Makhandia while part of the evidence of the Respondent was presented before Mr. Justice Makhandia and part of it before me. At the conclusion of the trial this court invited learned Counsels from both sides to file and exchange written submissions. I have considered the evidence and the rival submissions. What emerged from the evidence are three separate and distinct ownership or acquisition of properties:

- i. **Properties acquired by or registered in the names of [Particulars withheld] Companies namely: [Particulars withheld] Chemists Ltd and [Particulars withheld] Labs Ltd.**
- ii. **Those acquired and developed by the Respondent before and during the marriage.**

Let me start by considering the evidence identifying the properties owned or registered by Limited Liability Companies. There is no dispute that parties to this dispute listed the following properties as Company Property:

- i. **[Particulars withheld] Chemists Ltd.**
- ii. **Nyeri Municipality Block 1/ [Particulars withheld]**

iii. Nyeri Municipality Block 1/[Particulars withheld]

It is said the property was later taken over by Sagana Chemists (2002) Ltd. The aforesaid properties being Company Property cannot be regarded as Matrimonial Properties hence they can only be dealt with under the provisions of the Companies Act.

The following properties were identified to have been acquired or registered in the name of the Respondent:

- i. **Ngariama/Thirikwa/[Particulars withheld]**
- ii. **Aguthi/Gatitu/ [Particulars withheld]**
- iii. **Aguthi/Gatitu/[Particulars withheld]**
- iv. **Aguthi/Gatitu/[Particulars withheld]**
- v. **KQA**
- vi. **Nyeri Municipality Block [Particulars withheld]**
- vii. **Ngariama Kabare/ [Particulars withheld]**
- viii. **Nyandarua Ol-joro-orok West [Particulars withheld]**
- ix. **Ngariama/Kabare/[Particulars withheld]**
- x. **Ngariama/Kabare/[Particulars withheld]**

The Respondent testified and informed this court that he sold the following properties to pay school fees for the children:

- i. **Ngariama/Thirikwa/[Particulars withheld]**
- ii. **Ngariama/Kabare/[Particulars withheld]**
- iii. **Ngariama/Kabare/[Particulars withheld]**
- iv. **Ngariama/Ruguru/[Particulars withheld]**
- v. **Aguthi/Gatitu/[Particulars withheld]**
- vi. **Aguthi/Gatitu/[Particulars withheld]**
- vii. **Aguthi/Gatitu/[Particulars withheld]**
- viii. **Nyeri Municipality/[Particulars withheld]**
- ix. **[Particulars withheld]**
- x. **[Particulars withheld]**

In her evidence, the Petitioner complained that the aforesaid properties were sold after the month of April 2002 to defeat this cause. She also stated that there was no evidence that L.R.no.Nyandarua Ol-joro-Orok/West **[particulars withheld]** nor Bukayo/Central Nambale/ **[particulars withheld]** were sold. The Petitioner also alleged that the aforesaid properties were never sold but transferred on gifts to the Respondent's sister and brother to defeat this case.

In the opinion of this court, whether the properties were conveyed by way of gift or for a consideration the fact remains that they are no longer in the name of the Respondent hence they cannot be treated as Matrimonial Properties. If will advised the aggrieved party can take other appropriate proceedings to recover the same but not through these proceedings. Though each party presented the list of the documents they thought were Matrimonial Properties, in my view and on the basis of the evidence tendered the following properties should be treated as Matrimonial Properties:

- i. **Nyeri Municipality Block II/ [particulars withheld] alias Nyeri Municipality Block II/ [particulars withheld] (Half share)**
- ii. **Ngariama/Kabare/ Particulars withheld]**
- iii. **Plot no. [Particulars withheld] Phase II Thika Municipality**
- iv. **Kenya Industrial Estate Block II/ [Particulars withheld]-Nyeri**
- v. **Nyahururu/Block [Particulars withheld]**

Though the Respondent denied that the properties mentioned in (ii), (iii), (iv) and (v) herein-above are registered in his name, he did not provide documents to show who is the registered owner, I am satisfied

the Petitioner managed to identify those properties and linked the Respondent as the proprietor. As the law stands, Matrimonial Properties can only be divided amongst the couples on the basis of evidence of financial contribution. It was therefore incumbent upon the Petitioner to establish her claim. The Petitioner has suggested that she be given half of the aforementioned properties. The Respondent urged this court to reject the submission because the Petitioner had failed to establish her claim. I have considered her evidence and it is clear that the Petitioner has failed to discharge the burden of proof of financial contribution to the properties mentioned in (ii) – (v) herein-above.

However, regarding the property mentioned in (i) above i.e L.R.no.Nyeri Municipality Block II/[**Particulars withheld**] alias Nyeri Municipality Block II/ [**Particulars withheld**]there is evidence that the Petitioner is operating her business there and that has been paying the rates accruing from the property. Though there is no clear cut financial contribution I am convinced she played a role in acquisition and development of the plot. The Petitioner is entitled to get half of the aforesaid parcel i.e a quarter of L.R.no.Nyeri Municipality Block II/ [**Particulars withheld**] alias Nyeri Municipality Block II/ [**Particulars withheld**]. An order is issued directing the Respondent to convey that portion to the Petitioner. This being a dispute involving a couple whose union has gone sour I direct that each one meets his or her own costs.

Dated, Signed and delivered in open court this 21st day of February, 2014.

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J.K.SERGON

JUDGE

In the presence of:

Mr. Gori for Petitioner

Mrs. Kahiga h/b for Mr. G. Mwangi for Respondent