

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT 26 OF 2013

S W K.....PLAINTIFF

VERSUS

J N K.....1ST DEFENDANT

REGISTRAR OF LANDS – KAJIADO COUNTY.....2ND DEFENDANT

R U L I N G

The Plaintiff filed suit against the 1st Defendant seeking a declaration in respect of ownership of matrimonial property. The suit was filed under the then Married **Women Property Act 1882**, before it was repealed and replaced by the **Matrimonial Property Act, 2013**. In the suit, the Plaintiff sought a declaration from the court in respect of the ownership of a parcel of land registered as LR. No. KJD/Kaputiei North / *[particulars withheld]* (hereinafter referred to as the suit property). The Plaintiff wanted the court to make a declaration that the parcel of land, although registered in the sole name of the 1st Defendant, was infact jointly owned by the Plaintiff and the 1st Defendant. Contemporaneous with filing suit, the Plaintiff filed an application pursuant to the provisions of **Order 40 Rules 1, 2, 3, 4 and 9** of the **Civil Procedure Rules** seeking orders from the court to restrain the 1st Defendant, by himself or through his agents, from dealing, alienating, interfering, pledging or transferring the suit property pending the hearing and determination of the suit property. The grounds in support of the application are stated on the face of the application. In essence, the Plaintiff was apprehensive that if the 1st Defendant is not restrained, he would adversely deal with the suit property thereby defeating her claim. The application is supported by the annexed affidavit of the Plaintiff. She swore an affidavit in further support of the application.

In response to the application, the 1st Defendant filed a document which he referred to as “**Chamber Summons**”. The “**Chamber Summons**” was supported by an affidavit. The document was prepared and filed by the 1st Defendant. He was acting in person. The 1st Defendant stated that he was willing to have the suit parcel of land shared equally between himself and the Plaintiff. However, he stated that the Plaintiff had refused to take up his offer to have the suit parcel of land shared between the two of them. He further stated that the Plaintiff had proposed that his share of the suit parcel of land should be registered in the names of their children thus leaving him with nothing. He reiterated that he was not opposed to the Plaintiff’s suit to have the suit parcel of land divided into two equal portions and thereafter each portion be registered in the name of the Plaintiff and the 1st Defendant.

During the hearing of the application, this court heard oral rival submission made by Mr. Nduhiu for the Plaintiff and Mr. Kabura for the 1st Defendant. This court has carefully considered the said submission. Certain facts are not in dispute in this case. It is not disputed that the 1st Defendant is the registered owner of the suit parcel of land. It is further not disputed, indeed it has been admitted by the 1st Defendant, that the suit property is matrimonial property. The Plaintiff filed the present suit seeking a declaration of the court for the suit property to be divided between herself and the 1st Defendant. The 1st Defendant is not opposed to the Plaintiff’s suit. Indeed, the 1st Defendant has not filed a defence to the Plaintiff’s suit. The 1st Defendant has gone ahead and sworn an affidavit in which he has admitted that indeed the Plaintiff is entitled to half a share of the suit property. This court will in the circumstances, instead of considering the application for injunction, which is interlocutory in nature, enter judgment in favour of the Plaintiff as

prayed in the originating summons.

In the premises therefore, this court enters judgment in favour of the Plaintiff on admission by the 1st Defendant pursuant to **Order 13 Rule 1** of the **Civil Procedure Rules**. The court declares that the parcel of land registered as LR. No. KJD/Kaputiei North/ *[particulars withheld]* is matrimonial property jointly owned by the Plaintiff and the 1st Defendant in equal shares. The suit parcel of land shall be demarcated and divided into two equal halves. The 1st Defendant shall transfer half share to the Plaintiff. He shall do so within sixty (60) days of the date of delivery of this Ruling. Since the 1st Defendant conceded to the suit, there shall be no orders as to costs. Each party shall bear their costs. It is so ordered.

DATED AT NAIROBI THIS 31ST DAY OF JULY, 2014

L. KIMARU

JUDGE