



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HCCC NO. 71 OF 2012

M W.....PLAINTIFF

VERSUS

S M K.....DEFENDANT

RULING

1. The applicant herein moved this court on 17th December 2012 for division of matrimonial property, vide an Originating Summons dated 17th December 2012.
2. The said suit is anchored on the fact that the parties contracted a valid statutory marriage on 2nd December 2000 in Nyeri. There were pending proceedings for the dissolution of the marriage and the applicant sought orders in the Originating Summons touching on division of property specified in the Originating Summons.
3. The applicant contemporary filed a Motion for orders to restrain the respondent from alienating the property the subject of the suit pending hearing and determination of the suit. The applicant's case being that it was the respondent who had possession of the said property and there was therefore danger that he could dispose of the same before the hearing and disposal of the suit.
4. In her affidavit sworn on 17th December 2012, she deposes that Nairobi/Block ***[particulars withheld]*** is a property situated at Donholm, Nairobi. On it stands a three-bedroomed house, which is the matrimonial home. It is the respondent who is at the matrimonial home, while the applicant and the children reside in rented premises. She alleges to have had contributed to the acquisition of the property in 2006 when she raised Kshs.500,000.00 from her relative being her contribution to the deposit. She also claims to have supported the construction of the home by purchasing materials and paying the workers. It is said that at the time the respondent was based at Mombasa.
5. Regarding the chattels she argues that although the motor vehicle ***[particulars withheld]*** is not in the respondent's name she knows for sure that it is his as he is always in possession of it. On the rest she says that she has been in employment since 2009 and has therefore contributed to the purchase of the household items and the vehicles.
6. The respondent has responded to the application vide his affidavit of 8th April 2013. He states that the parties have been separated since 2010. He contends that he has no intention of disposing of the property and argues that the sum of Kshs. 500,000.00 alleged to have been paid by the relative of the applicant was infact paid at the behest of the respondent. He states that the property was acquired through money obtained from the respondent's place of work. He also says he obtained

another loan from elsewhere for the construction of the house on the property. He states that the construction was overseen by a S W M and not by the applicant as alleged. He also says that the applicant did not do the household chores since he had hired house girls who he paid himself. On the motor vehicles, he says that they were acquired after the applicant had deserted the family. He also he had to obtain loans to purchase the vehicles. He has states that he acquired the household items using his own resources. He has attached several documents to his affidavit to support his contentions.

7. The applicant responded to the respondent's allegations vide her further affidavit sworn on 29th April 2013. She reiterates that she got her relative to pay the Kshs.500,000.00 towards deposit. She further reiterates that she supervised the works on the house. She contends that the household goods were acquired with her contribution.
8. It was ruled on 2nd May 2013 that the said Motion be disposed of by way of written submissions. Both sides did file their respective submission on 13th June 2013. Both submissions summarise the facts as set out the parties respective affidavits.
9. In cases of this nature there are only two issues for consideration. One, whether the parties were married, and two, whether the property in question was acquired during coverture.
10. From what has been placed before me, it is clear that the parties were indeed married. They contracted a statutory marriage on 2nd December 2000. That marriage is apparently the subject of proceedings to dissolve it in Nairobi CMCD No. 302 of 2011. It is not in dispute that the parties are husband and wife and have children between them. The parties did not address me on the current status of the divorce proceedings.
11. The material before me shows that the landed property – Nairobi/Block *[particulars withheld]* - was acquired in 2005 during coverture. Motor vehicle *[particulars withheld]* was acquired in 2012 after the parties had separated. Motor vehicle *[particulars withheld]* was acquired in 2011. No documents were placed before me on the household items, but from the affidavits it is clear to me that some of the items were acquired during coverture.
12. It is not for me at this stage to determine the respective contribution of either party to the acquisition of the property in question. That is for the judge who will eventually hear the Original Summons.
13. Having established that the parties were indeed married at the material time, and that the property in dispute was acquired during the course of the marriage, my responsibility at this state is to determine whether it is necessary for the court to issue a conservatory order for the purpose of protecting the property pending hearing and disposal of the Originating Summons. I have noted that the property is in the name of and/or control of the respondent. There is a real possibility that the same could be disposed of during the pendency of the suit. Such act would render these proceedings a waste of judicial time.
14. I am satisfied that a case has been made out for preservation of the property the subject of the Originating Summons dated 17th December 2012 pending the hearing and determination of the said suit. Consequently, I do hereby order that the respondent shall not dispose of or otherwise alienate in any manner whatsoever the property listed in paragraphs 2 and 3 of the Motion dated 17th December 2012. Each party shall bear their own costs.

DATED, SIGNED and DELIVERED at NAIROBI this 26th DAY OF September, 2014.

W. MUSYOKA

JUDGE