REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ELC. NO. 291 OF 2013

AHMED SHAHAME MWIDANI..... PLAINTIFF

- V E R S U S -

ZUBEDA ALI OMAR .....1ST DEFENDANT

ABDALLA ALI MAHSEN ..... 2ND DEFENDANT

RULING

[1] The applicant in this case brings this application praying that the 2nd respondent be restrained by injunction from paying rent to the 1st defendant in respect of the property known as MSA/BLOCK/XXVI/661 Kizingo pending the hearing and determination of this case. The applicant argued that he and first respondent were married under muslim law. On 6th June 2013 the applicant divorced the respondent. Upon divorce,the 1s respondent was allowed to occupy the matrimonial home for the mandatory three (3) months under muslim law a period called Eddah. That before the expiry of the three months the 1st defendant moved out of the matrimonial property and went to live elsewhere. That she advertised the house for rent. She got a tenant in the name of the second defendant. The applicant states that he wrote to the second defendant to stop paying the rent to the 1st respondent who has refused to do so.

[2] The applicant told the court that after the divorce under Muslim Law he had no further obligation to maintain the 1st respondent. He states that the matrimonial property is his. He attached the registration documents. He finally said that the issue of maintenance if any should be raised in the relevant divorce court. That the children of the marriage are all adults. That the applicant is ready and willing to maintain the children.

[3] The first respondent opposed the application. She admitted that they were married and now they are divorced. She averred that they built the subject house when they were married. She alleged that in 1977 the house was registered by the applicant in her name. She never produced any documents for such registration. She claimed that she was not maintained by the applicant. That she leased the house to maintain herself.

[4] I have keenly listened to the parties. I have paid close attention to what the 1st respondent has said. There is no dispute that the parties were married and that they were divorced as per the requirements of Muslim law. Equally there is no dispute that the marriage had three children who are now adults. Further there is no dispute that the parties lived in the suit property at Kizingo and the first respondent was left

there by the applicant after the final divorce to live there for 3 months the period called Eddah. The 1st applicant moved out of the said house before the 3 months, leased the house and went to live elsewhere.

[5] The issue of the 1st respondents maintenance and the ownership of the suit property shall be issues in this suit.

I am on a balance of probability convinced that the application has made out a case in his application dated 6th December, 2013. I allow the same as prayed.

Date and delivered in open court at Mombasa this 18th day of September, 2014.

S. MUKUNYA

JUDGE

18.9.2014

In the presence of:

Mr. Khatib Advocate for plaintiff/applicant

Respondent in person