



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**HCC NO. 3 OF 2014**

**IN THE MATTER OF THE MATRIMONIAL PROPERTY ACT, 2013**

**F M.....APPLICANT**

**VERSUS**

**C N.....RESPONDENT**

**RULING**

1. The amended Motion dated 3<sup>rd</sup> March 2014 seeks the reinstatement of the applicant to the property the subject of the suit as the respondent seeks alternative accommodation.
2. The applicant's case is that the subject property was acquired by the parties during coverture. She alleges to have contributed substantially to the acquisition of the asset, and has attached several documents as proof of her contribution. She avers that the marriage broke down irretrievably, the parties separated and she filed for divorce. She complains that the respondent is currently enjoying the property alone to her exclusion.
3. She swore a further affidavit on 2<sup>nd</sup> April 2014. The gist of the averments in this further affidavit is that the respondent did not have the financial muscle to acquire such property and the said asset was acquired through her sole efforts. She explains that she was forced out of the house when she found the respondent in bed with their maid.
4. The record does not reflect a reply to the application by the respondent.
5. The suit herein was commenced by way of Originating Summons seeking division of matrimonial property. It is not a suit about who is entitled to occupy the house in question but on the determination of shares in the property.
6. The applicant seeks reinstatement to the suit premises. I doubt whether that is a prayer that can be properly made in a suit for division of matrimonial property. It is a prayer that should be sought in divorce proceedings, for in such proceedings the wife is entitled to maintenance and upkeep pending and even after the determination of the proceedings.
7. Separation is said to have occurred in 2010. The motion for reinstatement is brought in 2014. Even if such a claim was permitted in a suit for division of matrimonial property an issue would arise as to whether the motion was made within reasonable time. It is not explained why the application was not made earlier, say in 2010 or 2011.
8. The application dated 3<sup>rd</sup> March 2014 is wholly without merit and I hereby dismiss it. As the respondent did not reply to it I will make no orders as to costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 21<sup>st</sup> DAY OF November 2014.**

**W. MUSYOKA**

**JUDGE**

In the presence of Mrs. Rashid advocate for the applicant.

In the presence of Mr. Owang advocate for the respondent.