



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL SUIT NO. 7 OF 2014 (OS)
IN THE MATTER OF DIVISION OF MATRIMONIAL PROPERTY
AND
IN THE MATTER OF SECTION 17 OF THE MARRIED WOMEN'S PROPERTY ACT (1882)
P L S.....APPLICANT
VERSUS
H A O.....RESPONDENT
JUDGMENT

1. The suit herein commenced by way of Originating Summons dated 6th February 2014. The plaintiff seeks two principal prayers:-
 - a. That plots numbers *[particulars withheld]* and *[particulars withheld]* Syokimau, motor vehicles *[particulars withheld]* and *[particulars withheld]* and household goods and items be declared as property belonging to him solely; and
 - b. That there be a declaration that he is entitled to 50% of Ngong/Ngong/ *[particulars withheld]* and a further declaration that the same be shared proportionate to the parties' contribution.
2. There is an affidavit of service sworn on 8th March 2014 and filed in court on 3rd April 2014. It evidences service of the Originating Summons on the defendant on 8th March 2014 at the Engen Petrol Station, Parklands, off Parklands Road.
3. The respondent did not reply to the application and consequently directions were obtained on 15th May 2014 that the same proceed as undefended to be disposed of by *viva voce* evidence.
4. The plaintiff testified on 26th June 2014. He stated that he had acquired Plots Nos. *[Particulars withheld]* and *[particulars withheld]* Syokimau and motor vehicles registration marks and numbers *[particulars withheld]* and *[particulars withheld]* on his own without any contribution from the defendant. The said assets he stated are in his name. He prays in the Originating Summons that the said assets be declared as belonging to his solely.
5. On Ngong/Ngong/*[particulars withheld]*, he testified that the property was acquired jointly, but he is

the one who solely developed it. It is quarter of an acre or 0.112 hectares. The sale price was Kshs.2,400,000.00. Each of them contributed Kshs.1,200,000.00. He had taken a loan of Kshs. 1,500,000.00 while she had obtained a loan of Kshs.2,200,000.00. The surplus of Kshs.300,000.00 and Kshs.1,000,000.00 was ploughed to the laying of the foundation for the flat which was constructed on the one half of the plot – that is on one eighth of an acre. Thereafter the plaintiff ploughed money to put up a five-storey apartment on the one-eighth. He stated that the defendant did not contribute any additional money after the initial contribution of Kshs.2,200,000.00. He averred that the development is nearing completion.

6. He proposed that the said property be shared out on a fifty/fifty basis so that each of the parties takes one eighth of an acre. He would like to have the improved portion, subject to his reimbursing the defendant Kshs.1,000,000.00 being her contribution to the improvement.

7. The testimony by the plaintiff was not controverted.

8. In view of the fact that the Originating Summons is not opposed and the evidence tendered orally by the plaintiff was not challenged, I do hereby allow the Originating Summons dated 6th February 2014, and make the following orders:-

- a. That Plots Nos. *[particulars withheld]* and *[particulars withheld]* Syokimau and motor vehicles registration marks and numbers *[particulars withheld]* and *[particulars withheld]* are hereby declared to solely belong to the plaintiff;
- b. That Ngong/Ngong/*[particulars withheld]* shall be divided equally between the two parties, with the plaintiff taking the one half that is developed with all the improvements on it;
- c. That further to (b) above, the plaintiff shall reimburse to the defendant the sum of Kshs.1,000,000.00 being her contribution to the said improvement;
- d. That no orders shall be made on the household goods and items as no evidence was adduced on them as to what they constitute and where they are; and
- e. That as the defendant did not participate in the proceedings, there shall be no order as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 21st DAY OF November 2014.

W. MUSYOKA

JUDGE