



**REPUBLIC OF KENYA**

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

**HIGH COURT CAUSE NO. 12 OF 2012**

**C A.....PLIANTIFF**

**VERSUS**

**W B.....RESPONDENT**

**JUDGMENT**

1. The Originating Summons herein was filed on 15<sup>th</sup> October 2012. The plaintiff seeks declarations regarding certain properties that she says were acquired during coverture and whose acquisition she alleges to have contributed to.
2. In a suit for division of matrimonial property the issues for determination are:-
  - (a) Whether there was a marriage between the parties; and
  - (b) If so whether the subject property was acquired during the marriage; and
  - (c) If so, whether the claimant contributed to its acquisition; and
  - (d) If so, how is the property is to be shared out between the parties?
3. From the Originating Summons, the supporting affidavit, the replying affidavit, the oral evidence of the plaintiff and the other material placed before me, it is clear to me that the parties hereto were in a valid customary law marriage since 1994, which produced three (3) children and ended in divorce on 28<sup>th</sup> June 2012, pronounced in **Milimani SMCDC No. 345 of 2012**.
4. The plaintiff has listed eight (8) landed properties, eight (8) motor vehicles and household goods as the assets acquired during coverture. Only four of the eight immovable assets are properly identified by their reference numbers, that is to say Plot No. **[particulars withheld]** Kayole, Plot No. **[particulars withheld]**, Kayole Nairobi Block **[particulars withheld]** Komarock and Plot No. **[particulars withheld]** Umoja Inner-core Sector 2. The other four do not have reference numbers, that is to say the plots at Nakuru and Kisumu, the two houses at the rural home in Busia and the Lavington property. Six (6) of the motor vehicles are properly described by their registration

marks and numbers, being *[particulars withheld]*, *[particulars withheld]*, *[particulars withheld]*, *[particulars withheld]*, *[particulars withheld]* AND *[particulars withheld]*. The registration details of the other two vehicles are not stated, that is the Toyota Harrier and the minibus plying the Dandora route.

5. According to her affidavit sworn on 10<sup>th</sup> October 2012, the plaintiff avers that:-

- a. Motor vehicle *[particulars withheld]* was bought in 2001,
- b. Plot No. *[particulars withheld]* Kayole Service Scheme was acquired in 2003,
- c. Plot No. *[particulars withheld]* Kayole Service Scheme was bought in 2005,
- d. Motor vehicle *[particulars withheld]* was bought in 2005,
- e. Nairobi Block *[particulars withheld]* Komarock was acquired in 2006,
- f. Plot No. *[particulars withheld]* – I Umoja Inner-core Sector 2 was acquired in 2008.

6. I have noted that the affidavit is silent on when the other assets were acquired. I note too that the defendant allegedly moved out of the matrimonial home in 2006, or put differently, the parties separated in 2006.

7. The defendant in his replying affidavit, sworn on 26<sup>th</sup> October 2012, concedes that plot No. *[particulars withheld]* Kayole and motor vehicle *[particulars withheld]* were acquired when the parties were living together. He states that the rest of the assets were acquired after he moved out of the matrimonial home. He concedes that Nairobi Block *[particulars withheld]* Komarock and Plot No. *[particulars withheld]* Umoja Inner-core Sector 2 are assets that he acquired solely. He denies owning plots in Nakuru, Kisumu and Lavington. He states that the house in Busia stands on his father's land.

8. I note from the reply that the defendant does not deny all the motor vehicles listed in the Originating Summons. Neither does he say a word about the house hold goods.

9. From the material discussed in paragraphs 5, 6, 7, and 8 above, I am satisfied that the following assets exist and were acquired during the marriage of the parties, that is to say:-

- a. Plot No. *[particulars withheld]* Kayole Service Scheme
- b. Plot No. *[particulars withheld]* Kayole Service Scheme
- c. Nairobi Block *[particulars withheld]* Komarock
- d. Plot No. *[particulars withheld]* – I Umoja Inner-core
- e. Motor vehicle *[particulars withheld]*
- f. Motor vehicle *[particulars withheld]*
- g. Motor vehicle *[particulars withheld]*
- h. Motor vehicle *[particulars withheld]*
- i. Motor vehicle *[particulars withheld]*

10. There is evidence that some of the assets were acquired during happier times when the two were living together and the rest were acquired after the parties separated in 2006 and before divorce was decreed on 28<sup>th</sup> June 2012.

11. The next consideration is whether the plaintiff contributed to their acquisition. She asserts that plots Nos. *[particulars withheld]* and *[particulars withheld]* Kayole were acquired when the parties were happily living together. Thereafter the parties embarked on development of the said plots. They developed residential units on the said plots which generate Kshs.63,000.00 and Kshs. 86,000.00 respectively per month. Motor vehicle *[particulars withheld]* is a matatu bought when the two parties were still together. She states that it was bought for Kshs.330,000.00 and she contributed Kshs.75,000.00 - Plot No. *[particulars withheld]* Kayole was bought for Kshs.350,000.00. She does not indicate what her contribution to the acquisition of the property was. She also does not state how much she contributed to the improvement of the plot. Plot No. *[particulars withheld]* was bought for Kshs.300,000.00, she does not state her contribution to its

- acquisition, nor on its improvement. The saloon car *[particulars withheld]* was also bought during this period for Kshs.370,000.00; she does not state her contribution to its purchase.
12. The other assets were acquired after the defendant left the matrimonial home in 2006. The transactions were carried out by the defendant. The plaintiff's case is that the money used by the defendant to acquire the assets was raised from the matatu business and the two residential blocks at Kayole, both of which she contributed in acquiring.
  13. The plaintiff argues that she had the means to contribute to the acquisition of the said assets. She initially sold second-hand clothes in Kayole, but after doing a tailoring course she ventured into the business of tailoring and dress-making. There is evidence that she registered a business called Tropical Dressmaking which she operated in Kayole. The business thrived. She operated two banks accounts and deposited part of her profit in her husband's bank account with Barclays Bank. She later expanded her business into importing shoes, bags, cosmetics and clothing materials. She has attached to her affidavit documents to support this. She states that the defendant was a lowly civil servant who did not earn enough money to support the sort of acquisitions the subject of these proceedings.
  14. Her case is that the money raised from her various endeavors, supplemented by loan facilities from for banks such as Equity Bank and Cooperation Bank went a long way towards contributing to the acquisition of the matrimonial property. There is ample documentary evidence to support this.
  15. The defendant's reaction to this comprised of mere denials. He concedes that the plaintiff ran a tailoring business, but denies that she had a large number of customers. He acknowledges that she operated the bank accounts stated in her papers, but states that they were personal accounts rather than business accounts. He states that she did not expand her business to importing shoes, bags, clothing materials and cosmetics from elsewhere. He denies that she even contributed to the acquisition and development of the assets, adding that the said assets were acquired and improved through his sole efforts. He mentions that some of them were even acquired after the parties separated in 2006 with his sole efforts using his own resources.
  16. I note that the defendant has not disclosed his sources of income – whether from employment or other endeavors. He has also not disclosed the bank accounts that he operated. He has attached no documents at all to his affidavit to support the contention that he is the one who solely acquired the assets in question and developed the plots.
  17. From the material placed before me I am satisfied that the plaintiff was engaged in a thriving business from which she raised resources which could be utilized in the acquisition of the assets the subject of these proceedings. She actively participated in the acquisition of the assets bought before 2006. She also contributed in the acquisition of the assets bought after that as the money used to acquire the said assets was raised from the operations of the matatu that she had contributed in its acquisition as well as rental income from the Kayole properties whose acquisition and improvement she had participated in.
  18. Both parties have not provided sufficient evidence of their direct contribution to the acquisition and development of the said assets. Consequently, I will hold that each contributed equally to the acquisition of the said assets.
  19. No valuations have been done and therefore I cannot do justice by allocating individual assets to each of the parties. The property shall therefore be distributed on a 50:50 basis as between the two parties.
  20. For avoidance of doubt I will answer the questions raised in the Originating Summons as follows:-
    1. That it is hereby declared that the property (movable and immovable) listed herein below with all

buildings and developments thereon were acquired and developed by the joint funds and efforts of the plaintiff and the defendant during their marriage and registered in the name of either the defendant or in the name of the plaintiff and are jointly owned by the plaintiff and the defendant, that is to say:-

- a. Plot No. *[particulars withheld]* Kayole Service Scheme
- b. Plot No. *[particulars withheld]* Kayole Service Scheme
- c. Nairobi Block *[particulars withheld]* Komarock
- d. Plot No. *[particulars withheld]* – I Umoja Inner-core Sector 2.
- e. Motor vehicle *[particulars withheld]*
- f. Motor vehicle *[particulars withheld]*
- g. Motor vehicle *[particulars withheld]*
- h. Motor vehicle *[particulars withheld]*
- i. Motor vehicle *[particulars withheld]*;

2. That it is hereby declared that 50% of the properties aforesaid is held by the defendant in trust and for the beneficial interest of the plaintiff;
3. That the said properties shall be shared on a 50:50 basis between the parties; but in the event of the parties failing to agree on a mode of division, in the next six (6) months hereof, the said properties shall be sold and the net proceeds shared equally as between the plaintiff and the defendant;
4. That if any of the assets has already been sold by either party the other party shall be entitled to half of the sale proceeds thereof;
5. That the Deputy Registrar of the Family Division is hereby empowered to sign such documents as may be necessary to facilitate execution and enforcement of the orders hereinabove; and
6. That the plaintiff shall have the costs of the suit.

**DATED, SIGNED and DELIVERED at NAIROBI this 11<sup>th</sup> DAY OF December 2014.**

**W. MUSYOKA**

**JUDGE**

**No appearance of both advocates for the parties.**