



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Civil Case 24A of 2008**

**IN THE MATTER OF THE MARRIED WOMEN PROPERTY ACT**

**JNW.....APPLICANT**

**VERSUS**

**JM.....RESPONDENT**

**JUDGEMENT**

The Originating Summons for determination is dated 9th June 2008. In it the applicant asks for various declarations, namely:-

- (a) that the matrimonial home standing on (Particulars withheld), currently registered under the Harambee Savings & Credit Society, be declared as jointly owned by the applicant and respondent.
- (b) that immovable and movable property acquired and jointly held by or in the name of the respondent or is in his possession or control be declared to have been acquired by the joint efforts of the applicant and the respondent during coverture and is therefore matrimonial property.

The application is also asking of other orders – an inhibition against registration of dealings on (Particulars withheld) and orders restraining the respondent from alienating or wasting the said property. She also seeks such other or further orders as the court may deem necessary. She would also like the respondent condemned to pay costs of this suit.

The grounds in support of the application are set out on the face of the application. The parties are married. It is alleged that the couple acquired the property the subject of the suit jointly. The respondent is said to have had threatened severally to eject the applicant from the matrimonial home and had asked her amid threats to vacate the home immediately. The respondent is said to have forcefully evicted the applicant and their children from the home, which is described variously as (Particulars withheld) and (Particulars withheld) Plot No.A287. Thereafter, the respondent is said to have denied the applicant access to the said home to collect her personal belongings and that of the children.

A schedule of the property the subject of the application is attached to the Originating Summons. The immovable property is (Particulars withheld) and (Particulars withheld). The movable property is classified clarified into two:-

Motor vehicle (Particulars withheld)( Subaru) and household items in (Particulars withheld). The household goods in the matrimonial property include a wall unit, a seven seater sofa set, a dining set (four dining chairs and a table), two coffee tables, a Total gas cylinder, a Total Meko gas cylinder, five beds with bedding, dressing mirrors (number not indicated) a wardrobe, a computer with printer and UPS system, two television sets, a radio set, VCR and VCD machines (number not indicated), cutlery and kitchen utensils (number not indicated) and clothes (type and number not indicated).

Both parties have filed affidavits. The applicants' affidavit was sworn on 9th June 2008. The respondent filed two affidavits. One sworn on 29th July 2008 and another sworn on 12th August 2010. Both parties are in agreement with respect to the following:-

- (a) that they married under the Luhya customary law, sometime in 1999;
- (b) that there are two children of the said union;
- (c) that at the time the suit was filed, the two issues of the marriage were at school at the (Particulars withheld) Primary School and the (Particulars withheld) Catholic Nursery School.
- (d) that both parties are working in the public service.
- (e) that (Particulars withheld) was acquired and developed doing coveture and the parties moved into the premises sometime in 2007.

The issues that are in dispute are:-

- (a) whether applicant contributed to the acquisition of the property the subject of the suit.
- (b) whether there were threats by the respondent to evict the applicant from the matrimonial home.
- (c) whether the applicant was evicted from the matrimonial home.

On (Particulars withheld), the applicant says that the same was partially developed at the time it was sold to them for Kshs.950,000.00 on 11th October 2005. She asserts that she is the one who paid for it vide cheque number 938291. She has annexed to her affidavit a document marked JNWO4 titled "**draft issue**". It was issued on 11th October 2005. It is a evidence of purchase of a banker's cheque by Wangoliko JN in favour of JKM, whose value was Kshs.950,000.00. She avers that they then spent Kshs.2,500,000.00 to put up a four bed-roomed massionate on the land and thereafter furnish it. The respondents response to this is that the applicant contributed a mere Kshs.190,000.00 of the Kshs.980,000.00 purchase price. He says the bankers cheque of Kshs.950,000.00 was issued from her account after he gave her the money deposit in the account and to thereafter buy a draft. He has attached a power of attorney and a sale agreement to his affidavit and asserted that the sale documents bore his name and not that of the applicant because he contributed the bulk of the purchase money. He further avers that he is the one who solely contributed to the development of the plot. He puts the cost of development at Kshs.2,411,567.00 and he has attached copies of documents to evidence the cost of the materials and the works done. He says that the applicant's contribution stood at the Kshs.190,000.00 she put in for the purchase of the plot itself.

Regarding the (Particulars withheld) property – (Particulars withheld) – the respondent says he purchased it without any contribution from the applicant. He depones that the same is registered in the joint names of the parties and he says that this was so as the two were at the time of purchase very close as husband and wife. The applicant has made no depositions at all on the circumstances of the purchase of (Particulars withheld). The respondent has pleaded similarly on the motor vehicles (Particulars withheld) and (Particulars withheld).

On the household goods, the applicant's portion is that she made significant contributions to the purchase of the same. She also pleads that she is made in direct contributions though expenses of the maintenance of the household, cooking, the children's schooling and the general care and welfare of the matrimonial

home. The respondent responds to that he bought everything movable in the matrimonial home. He has attached copies of the receipts for purchase of some of the household items in the house.

The respondent in his affidavit of 29th July 2008 denies threatening the applicant with eviction and avers that the applicant was still at matrimonial home. However, in the affidavit of 11th August 2010 he avers that the respondent left the matrimonial home in 2009. He denies evicting her. He similarly denies intention to sell the house. He expresses his willingness to refund the applicant's contribution to the purchase of the plot on which the matrimonial home stands.

The Originating Summons before me is premised on **Section 17** of the **Married Women's Property Act, 1882**. The provision states:-

***“ In any question between a husband and wife as to the title or possession of property either party....may apply by summons or otherwise in a summary way to any judge of the High Court who may make such order with respect to the property in dispute, and to the costs of and consequent to the application as he thinks fit...”***

The applicant in this case has come to court asking the court to declare the property registered in the name of respondent and that in his possession as jointly owned with the applicant. The declaration sought by the applicant brings the matter squarely within the jurisdiction granted to the court under **Section 17 of the Married Women's Property Act, 1882**. It is an invitation to the court to declare that the property held by the respondent is so held in trust for the applicant so long it was acquired during coverture.

The design of the Married Women's Property Act, 1882, was to afford married women a remedy so far as property acquired during coverture is concerned. It is meant to give the court jurisdiction to determine, as between spouses, their respective rights to what is referred to as matrimonial property. Neither the Married Women's Property Act, 1882, nor the family law statutes – that is to say the Marriage Act, the African Christian Marriage and Divorce Act and the Matrimonial Causes Act – define matrimonial property. The term is commonly used to refer to property available to the use of both spouses during coverture even if the same is acquired by one of them or is registered in the name of one of them.

The principles applied in determining the rights of spouses in such cases have been pronounced in a host of cases, such as *Karanja -vs- Karanja* (1976) KLR 307, *Kivuitu -vs- Kivuitu* (1991) 2KLR 241, among others. The underlying principle is equal division of such property. It has been held that what is to be taken into account is the contribution of either spouse to the acquisition of the property. It has been said in most of the cases that the contribution of a spouse may be either direct or indirect.

It would appear from the material placed before me that the parties in this matter acted together with respect to the acquisition of (Particulars withheld). Both contributed directly to the purchase of the plot. It would appear that both intended the property to be their matrimonial home. Indeed, when development of the plot was completed they both moved in. It was their home until the marital meltdown which forced the applicant to leave. I have no doubt from the evidence that the actual development of the plot was undertaken by the respondent and that there was little financial contribution to this by the applicant. However, the applicant contributed indirectly. She took care of the family by doing the usual domestic chores associated with a wife, including bearing and taking care of the children. This was a family home, acquired during coverture for use by both spouses. It was their common property.

The same principle applies to the household goods. Items that are acquired for the purpose of making a house habitable are household goods meant for the enjoyment of all the members of the household. I am referring specifically to goods that are normally associated with a household. In this case, I am referring to the wall unit, sofa set, dining set, tables, fridge, gas cooker, gas cylinders, beds and bedding, dressing mirrors, wardrobes, television sets, radios, video machines/players, and cutlery and kitchen utensils. These are the items that make the household complete. It does not matter who actually acquired them. They were acquired specifically for the home, for use by all who are members of that household. They therefore are common property. Clothes, however, are not common property. They are not to be used by everyone in the household as they are bought specifically for use by a specific identified

person or individual. The computer is not necessarily a household ware. It has not been demonstrated that it is a domestic item. I am also of the view that motor vehicles are personal, not community property, unless it can be demonstrated that the vehicle is bought for family purposes, such as taking children to school or is brought by one spouse for use by the other spouse.

(Particulars withheld) is said to be registered in the joint names of the parties. The respondent concedes as much. There is nothing for me to determine or declare with respect to this property. It does not matter who acquired the property.

Having taken everything into account, I will make the following declarations:-

- (1) That (Particulars withheld) is owned jointly by the applicant and the respondent.
- (2) That (Particulars withheld) is owned jointly by the applicant and the respondent.
- (3) That motor vehicle (Particulars withheld), Subaru is the property of the respondent.
- (4) That the household items set out in the schedule are owned jointly by the applicant and the respondent save for the computer and its accessories and the clothes.

Nothing has been placed before me to demonstrate that the applicant and respondent have ceased to be married. I am therefore shy about making orders that are likely to accerelate the break up of the union. Consequently, I decline to grant prayers 3 and 6 of the Originating Summons. Prayer 4 is interlocutory and therefore it does not merit consideration.

It is so ordered.

**DATED, SIGNED and DELIVERED at NAIROBI this 16th DAY OF May, 2013.**

**W. M. MUSYOKA**

**JUDGE**