

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

HIGH COURT CIVIL CASE (OS) 6 OF 2012

P O M.....PLAINTIFF

VERSUS

M N K

alias M N P.....RESPONDENT

RULING

The Motion dated 25th July 2012 seeks several orders relating to Plot No. (particulars withheld) within (particulars withheld). The applicant would like the respondent restrained from alienating the said property, the appointment of a receiver to manage the property and to collect revenue, a sum of Kshs.60,000.00 to be paid to each of the parties and an order for deposit in court of the rents collected between September 2011 and the date of the ruling in this application in court. The application is brought in a suit, commenced by way of plaint, praying in the main for a declaratory order that Plot No. (particulars withheld) within (particulars withheld) was jointly owned in equal shares by the plaintiff and the defendant.

For all purposes this is a suit that should have been brought under **Section 17** of the Married Women's Property Act, 1882, by way of Originating Summons. That is the procedure prescribed for suits of this nature. I note that although the plaintiff acknowledges that the parties did not go through any form of marriage ceremony, they were for all purposes a married couple. It is on that score that there is pending at the magistrates' courts a divorce cause for dissolution of the union, being Nairobi **CMCDC No. 454 of 2011**.

The matter before me has not been presented in proper form. I am therefore unable to entertain the Motion dated 25th July 2012. I will allow the plaintiff thirty (30) days to regularize the position by filing the claim in proper form in this cause. That is to say by lodging an application under **Section 17** of the Married Women's Property Act, 1882, in the form of an Originating Summons. This will facilitate the disposal of the matter in the usual manner.

However, as the court is seized of the matter, and to avoid hardship to the plaintiff, even as he seeks to regularise his position, I hereby grant temporary preservative orders in terms of prayer 2 of the Motion to last for 30 days.

It is so ordered.

SIGNED DATED and DELIVERED in open court this **15th** day of **August, 2013**.

W.M. MUSYOKA

JUDGE