



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
(MILIMANI LAW COURTS)
Civil Suit 57 of 2008

F.K.....PLAINTIFF

VERSUS

A.W.K.....RESPONDENT

J U D G M E N T

1. The parties herein were married in September 1991 and their union was dissolved in October 2010 in CMCC No.118/2006 at Milimani Court. The issue that is left to be determined is the division of the matrimonial properties acquired during marriage.

2. Parties have made my decision easier because they agreed that the following properties were acquired jointly;

- i) *Plot No.13 on L.R.No.[...]*
- ii) *Plot No.14 on L.R.No.[...]*
- iii) *Plot No.13 [...]*
- iv) *Plot No.[...]*
- v) *Plot No.[...]*

3. The Respondent has added the following other assets which she claims the Plaintiff has appropriated to himself;

- vi) *Motor-vehicle Registration No. [...]*
- vii) *Motor-vehicle Registration No. [...]*

4. The proposal by the Plaintiff on distribution of the properties is as follows;

- “i) *Plot No.13 on L.R. No. [...]* [to the] *Plaintiff*
- ii) *Plot No.14 on L.R. No. [...]* [to the] *Respondent*

iii) *Plot No.13 with [...]* (be sold and the proceeds shared equally)

- iv) *Plot No. [...]* [to the] *Plaintiff*
- v) *Plot No. [...]* [to the] *Respondent.*”

5. The Respondent's proposal is as follows;

- “i) Plot Nos. [...]and [...] [to the] Applicant***
- ii) Plot No.13 [...] be sold and the proceeds thereof be shared equally***
- iii) Plot Nos.13 and 14 on L.R. No. [...] [to the] Respondent.”***

6. There is no disagreement on Plot No.13, [...]and regarding Plots Nos.13 and 14 on L.R. No. [...], there is reason and sense in the Respondent's proposal that it should be apportioned to one party because the development on the plots traverses the boundary between the two. The justification made by the Respondent in seeking to have the same apportioned to her is that the Applicant has benefitted from the motor-vehicles exclusively. However, there is no evidence as to the value of either the two plots or the motor-vehicles and from where I sit, the argument is unsupported by any tangible evidence. I will shortly rule on what should be done about plots Nos.13 and 14 aforesaid.

7. Similarly, the value of both plots Nos.118 and 119 has not been given and it is impossible to tell whether their value is equal to that of plots No.13 and 14 aforesaid.

8. With all the above ambiguities in the evidence before me, the more reasonable proposal is that made by the Applicant since both parties are to share each of the assets equally. That would therefore take care of the issue of plots Nos.118 and 119. Turning back to plots Nos. 113 and 114, since the same cannot be divided into two, the better option would be for the same to be sold off and the proceeds shared jointly and in the alternative, the same to be valued and if either party is able to pay the other, one-half of the value, then that party will do so and retain the two plots.

9. As regards the motor-vehicles, I am unable to make any orders in that regard as the evidence on their existence is two scantily.

10. In conclusion, the matrimonial properties shall be divided as follows;

- i) Plots Nos. 13 and 14 on L.R. No. [...]to be sold and the proceeds shared equally between the parties***

AND

In the alternative, should any party be willing to pay the other party one-half of the value of the two plots, then upon valuation, he/she should do so and retain both plots.

- ii) Plot No.13 [...]should be sold and parties to share the proceeds, equally.***
- iii) Plot No. [...]– to be transferred to the Plaintiff.***
- iv) Plot No. [...]– to be transferred to the Respondent.***

11. Each party will bear its own costs.

12. Orders accordingly.

DATED, DELIVERED AND SIGNED AT NAIROBI THIS 31ST DAY OF JANUARY, 2012.

31/1/2012

CORAM:

ISAAC LENAOLA – JUDGE
Kajuju – Court Clerk

Mr. Maina hold brief for Mr. Ngugi for Applicant

Mr. Mwaniki for Respondent

ORDER

Judgment duly read.

Parties to have copies of the judgment.

ISAAC LENAOLA

JUDGE