

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL SUIT NO.10 OF 2006 (O.S.)

REBEKA NYANJEGA NJAU.....
.....APPLICANT

VERSUS

ELIMO PHILIP NJAU.....
.....RESPONDENT

R U L I N G

On 19th April 2007, Aluoch J entered judgment in favour of the applicant as against the respondent. She declared that the property known as LR.No.27/37 (Original No.27/35/2) (hereinafter referred to as the suit property) was acquired and developed by the joint funds and efforts of the applicant and the respondent during the subsistence of their marriage. The court ruled that although the property was registered in the name of the respondent, the applicant was entitled to ownership of 50% of the suit property. She finally ruled that the suit property be settled in equal portions between the applicant and the respondent. The respondent's attempt to set aside the said judgment was dismissed by Rawal J on 29th January 2009.

From the pleadings filed, it is apparent that the respondent has thwarted all the efforts by the applicant from executing the said judgment. With a view to realizing the fruits of the said judgment, the applicant filed an application pursuant to the provisions of **Section 3A** of the **Civil Procedure Act** seeking orders from the court to the effect that the Deputy Registrar of this court be empowered to sign all the conveyancing documents that the respondent was required to sign to give effect to the said judgment of the court. The application is supported by the annexed affidavit of the applicant and the grounds stated on the face of the application. The application is opposed. The respondent filed grounds in opposition to application. It was the respondent's contention that the orders prayed for by the applicant in the application were not the orders that were issued by the court when it rendered its judgment. The respondent states that the orders sought is outside the purview of **Section 17** of the **Married Women's Property Act, 1882** in so far as it seeks to pass propriety interest from one spouse to another. He urged the court to dismiss the application with costs.

At the hearing of the application, this court heard rival oral submissions made by Mrs. Kalsi for the applicant and by Mr. Keyonzo for the respondent. I have carefully considered the said submissions including the authorities cited by the respondent in support of his opposition to the application. The applicant desires to have the judgment rendered in her favour executed. On the other hand, the respondent objects to the application on the grounds that the orders craved for by the applicant cannot be granted. Having evaluated the facts of this case, it was clear to this court that there is a valid judgment issued by this court which ought to be given effect to.

If I understood the respondent's objection correctly, it is his contention that the declarations issued by the court in regard to the suit property did not in any way amount to an order that the suit property should be sub-divided into two portions. This court does not find favour with such argument. The court clearly directed that the suit property be settled in such a manner so that the applicant and the respondent can have equal proportions therein. If the said order does not imply that the suit property ought to be sub-divided into two equal portions, then I do not understand what other meaning could possibly be ascribed to it. The authority cited by the respondent including ***Mbugua vs Mbugua [2001] 2EA 445*** is of no help

to the respondent. This is because, unlike in the aforesaid case where the court was grappling with the question whether the applicant had established contribution either directly or indirectly to the acquisition of the properties that was the subject matter of the case, in the present case there is already a judgment on record in favour of the applicant. This court has a duty to assist a successful litigant give effect to its judgment. This court is of the view that the respondent cannot, in the circumstances of this case, resist the applicant's application.

In the premises therefore, the respondent is hereby ordered, within thirty (30) days, to execute all the conveyancing documents that will enable the judgment of this court to be given effect to the judgment of this court or in default thereof the Deputy Registrar of this court shall execute the said documents on behalf of the respondent. The applicant shall have the cost of this application.

DATED AT NAIROBI THIS 11TH DAY OF FEBRUARY, 2011

L. KIMARU
JUDGE