



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

CIVIL CASE NO.14 OF 2009

LILLY GATHONI KARATHIPLAINTIFF

Versus

LINCOLN KARATHI WILLYS.....DEFENDANT

JUDGMENT

Lilly Gathoni Karathi, the plaintiff herein, took out the originating summons dated 26th January 2009 pursuant to the provisions of section 17 of the Married Women's Property Act (1882) in which she sought for judgment in the following terms:

1. ***That a declaration do issue that the following properties,***
 - a. ***Thegenge/Karangia/293***
 - b. ***Laikipia/Salama/Muruku Block/372***
 - c. ***Laikipia/Salama/Muruku Block 1/319***
 - d. ***Plot No. 1 at Gachatha Market***

with buildings and developments thereon, acquired or developed through the joint efforts and funds of the Applicant and the Respondent during their marriage, and all registered in the name of or in the possession of the Respondent, are owned jointly by the Applicant and the Respondent in the ratio of 50%:50%.

2. ***That a declaration do issue that the Respondent holds the above listed property in trust for the Applicant.***

3. ***A declaration that all household goods in the matrimonial home on THEGENGE/ KARANGIA /293 are owned by the Respondent.***

4. ***That the Respondent be condemned to pay the costs of this application.***

The plaintiff filed an affidavit in support of the Originating summons. When Lincoln Karathi Willys, the Defendant herein he filed a replying affidavit to oppose the Originating summons the Plaintiff and the Defendant. The plaintiff and the Defendants were each allowed to file further affidavits to support their positions. This court gave directions to have the originating summons determined by the reception of oral evidence. At the trial, the plaintiff and the defendant each testified in support of their case without summoning the evidence of independent witnesses. At the close of the case learned counsel for plaintiff and the defendant in person were permitted to file written submissions.

The plaintiff told this court that she got married to the defendant in 1961. She alleged that during the existence of their marriage the aforesaid properties were acquired and registered in the name of the Defendant. She claimed she is entitled to 50% of the same by virtue of her contribution towards their acquisition and development. The plaintiff told this court that their matrimonial home is built on L.R. no. Thegenge/Karangia/293. She said she was on gainful employment as a nurse and secretary. The plaintiff also claimed she undertook farming activities which income she used to purchase and to put up their matrimonial home. The plaintiff narrated that she contributed Kshs. 10,000/- and the sum of Kshs. 170,000/= which they received as presents during their wedding to complete payment of purchase of L.R. no. Thegenge/Karangia/293.

The plaintiff further claimed that she cultivated maize, potatoes, cabbages, reared sheep and kept dairy cows whose proceeds she used to purchase the two parcels of land i.e. L.R. No. Laikipia/Salama/Muruku Block/372 and L.R. no. Laikipia/Salama/Muruku Block 1/319. The plaintiff further averred that the Defendant inherited from his late father plot no. 1 at Gachatha Market. She claimed they jointly developed the plot. They demolished the timber structure and put up a permanent structure. She produced a bank passbook showing she and the defendant held a joint bank account which they used to deposit the farm proceeds.

The Defendant on his part disputed the evidence of the Defendant. He confirmed that the plaintiff was a trained nurse whom he married in 1961. He said that the parcel of land known as L.R. no. Thegenge/Karangia/293 is registered in the name of his late father, Karathi s/o Wariari. The defendant averred that plot no. 1 Gachatha market contains a permanent house which had been put up by his late father where he used to operate a shop. The defendant claimed that he solely purchased the two Laikipia parcels of land in 1976 from Njagi Mugambi each at Kshs. 6,500/=. He tendered the relevant agreements. The defendant denied even requesting the plaintiff for financial assistance. The couple had 8 children who were ably raised up by the plaintiff while the defendant was away. The defendant further stated that he renovated the houses in plot no. 1 at Gachatha in 1976. He currently receives rent from those rentals. The Defendant also claimed that the plaintiff contributed nothing to purchase and to develop the Laikipia parcels of land.

I have considered the evidence and the written submissions. What is at the centre of this dispute are four properties hereinabove enumerated. The parcel of land known as L.R. no. Thegenge/Karangia/293 is registered in the name of Karathi s/o Wariari. From the evidence tendered it would appear Karathi s/o Wariari is dead. It is also not in dispute that the matrimonial home of the parties has been put up on the aforesaid land. In my view that property cannot be regarded as matrimonial property, hence it cannot form part of the land allegedly acquired jointly by the couple. Perhaps what they should lay claim is the structures put up on the plot. I am further convinced that plot no. 1 at Gachatha market was and is still the property of Karathi s/o Wariari. It cannot therefore be said to form part of the matrimonial property of the couple. There is no doubt there are some rentals which were put up during the subsistence of the couple's marriage. The only assets which can be stated that they were acquired during the marriage of the plaintiff and the defendant are the Laikipia property i.e. L.R. No. Laikipia/Salama/Muruku Block/372 and L.R. no. Laikipia/Salama/Muruku Block 1/319. In dealing with questions relating to matrimonial property under S.17 of the Married Women Property Act (1882), the court of Appeal restated the applicable principles in the case of **Peter Mburu Echaria vs Priscilla Njeri Echaria** C.A. no.75 of 2001 at page 22 in part as follows:

“We have already referred to some speeches of the Lords in both Petitt vs Petitt and Gissing vs Gissing. It is clear from those cases that when dealing with disputes between husband and wife over property the court applies the general principles of law applicable in property disputes in all courts between all parties irrespective of the fact that they are married. Those principles as Lord Diplock said in Petitt vs Petitt are those of English law of Trusts. The House of Lords specifically decided so in Gissing vs Gissing. According to the English Law of Trusts, it is only through the wife's financial contribution, direct or indirect towards the acquisition of the property registered in the name of her husband that entitles her to a beneficial interest in the property.”

In a nutshell it is now well settled that the wife must establish her financial contribution to the purchase or

development of the property registered in her husband's name. In the case before me, the plaintiff has specifically stated that she used her salary, proceeds from the sale of farm produce, milk and sale of animals to contribute in purchasing the two parcels of land. The defendant has not denied that the plaintiff was salaried. He has not also denied that the plaintiff engaged herself in farming activities and animal husbandry which gave her extra source of income. There is also no dispute that the properties were acquired during the existence of the marriage. The defendant has vehemently denied that the plaintiff contributed to the acquisition of those parcels of land. The defendant said that he purchased the two parcels of land in 1976 each at Kshs. 6,500/= He claimed he earned enough money from his employment with Tetu coffee Society where he worked as the secretary Manager. I am unable to believe the allegation by the defendant that the plaintiff never contributed any money to the purchase of those parcels of land. The plaintiff was able to show that they operated a joint account. She produced a copy of the pass book for a Savings Account held by the Defendant with Tetu Cooperative Society Ltd which the couple jointly operated. The Defendant admitted that those parcels of land were purchased using his salary from Tetu Coffee Society where he was the secretary manager. The plaintiff on her part claimed that she deposited all the proceeds of the farm produce, sale of animals and milk in that account. The plaintiff alleged that when they parted ways with the defendant, the defendant carted away all the relevant documents which she could have used to prove her case. I cannot understand why the defendant denied an obvious fact that they operated a joint account with his wife. In banking a spouse can authorize another to operate his or her account. The defendant has not controverted the evidence of the plaintiff that she banked all the proceeds from the farm and the sale of milk and animals in his account. I am convinced by the evidence tendered by the plaintiff that she contributed in the purchase of the two parcels of land. I am satisfied that she is entitled to half of each of those parcels of land.

In the end I am satisfied that the plaintiff has proved her case to the required standards. I hereby declare that the plaintiff is entitled to 50% of the parcels of land known as L.R. No. Laikipia/Salama/Muruku Block/372 and L.R. no. Laikipia/Salama/Muruku Block 1/319. I decline to give her the orders sought in respect of the other properties i.e Plot no. 1 at Gachatha Market and L.R. no. Thegenge/Karangia/293 because those properties are in the names of Karathia s/o Wariari, deceased. The deceased's estate is yet to be succeeded.

A fair order on costs in the circumstances of this case is to order that each party bears his or her own costs.

Dated and delivered this 8th day of April 2011.

J.K. SERGON
JUDGE

In open court in the presence of Miss Kabethi h/b for Miss Mwai for the Applicant and the Respondent in person.

J.K. SERGON
JUDGE