



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Suit 165 of 2009

ESTHER WAMBUI MAINAAPPLICANT
VERSUS
IBRAHIM NDWIGA.....RESPONDENT

JUDGMENT

In this OS, the parties are husband and wife. They solemnized their marriage on 6th April 1996 at the CPK Cathedral Church, Nakuru. Their marriage was dissolved by a court decree of 3rd October, 2008.

The plaintiff claims that prior to their marriage, she had bought the piece of land situated in Nakuru and known as Title No. Nakuru Municipality/ Block 15/ 350 (the suit property). In the course of their marriage, they jointly constructed a block of flats on it. Now that their marriage has been dissolved, though the construction is incomplete, the plaintiff claims for an order that the suit property be sold and the proceeds thereof be shared equally.

In his replying affidavit, the defendant deridedly asserted that the suit property was allocated to the plaintiff and that she did not buy it as she claimed. He exhibited copies of documents showing that he took a loan from Barclays Bank of Kenya Ltd with which he claimed he developed the suit property. In the circumstances he urged the court to dismiss the plaintiff's claim.

The parties did not testify. Their respective counsel asked me to decide the matter on the affidavit evidence on record.

I have considered the averments in the affidavits in support of and in opposition to the OS. It is common ground that the plaintiff acquired the suit property prior to marrying the defendant. Whether she bought it or it was allocated to her is immaterial. The fact is that she owned it before they married.

Though the documents annexed to his replying affidavit show that at some stage the defendant obtained some banking facility from his bank, there is nothing to show that he spent the amount or part of it to construct the flats on the suit property. It is therefore not clear what contribution each party made to the construction. In the circumstances, I hold that the parties have an equal share of the suit property. I therefore direct that the property be valued by a valuer agreed by the parties and either party do purchase the other's share failing which the same be sold in the open market and the parties share equally the proceeds thereof. Each party shall bear its own costs of this suit.

DATED and delivered this 21st day of January, 2010.

D.K. MARAGA
JUDGE.