

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO.24 OF 2006 (O. S.)

MARGARET MWIKALI NGUNGU.....PETITIONER
VERSUS
ELIJAH NGUNGU MWENGI.....RESPONDENT

RULING

On 18th April 2008 Aluoch J (as she was then) rendered judgment in respect of the originating summons that had been filed by the petitioner herein. The learned judge substantially allowed the petitioner's originating summons which sought declarations to the effect that the petitioner was entitled to be recognized as the joint owner of the matrimonial properties registered in the names of the respondent. In particular, the court ruled that the petitioner had established that she had participated and had contributed in the acquisition of the matrimonial property and was therefore entitled to be declared to be a 50% joint owner of the properties listed in the originating summons.

On 26th November 2009, the petitioner moved the court by notice of motion seeking an order from the court that the properties which the court decreed in her favour be fully vested in her name. The said properties are, LR.No.15065/17 off Ndalat Road, Karen, LR.No.Nairobi/Block 72/361, Onyonka estate, Langata House No.C.30, Nissan sunny reg.No.KAM 853 C and a parcel of land situate at Kibwezi (hereinafter referred to as the said properties). The petitioner further prayed that the court authorizes the deputy registrar of the court to execute all the necessary conveyancing documents to give effect to the decree of the court that vested the suit properties to the petitioner. The grounds in support of the application are stated on the face of the application. The application is supported by the annexed affidavit of the petitioner. The application is opposed. The respondent filed grounds in opposition to the application.

This application was severally listed for hearing before this court. During these instances, it became apparent to the court that the respondent was reluctant to have the application heard and disposed of. On 24th June 2010, the respondent's counsel informed the court that he no longer had instructions to act for the respondent. The court directed the said counsel to file an appropriate application to cease acting for the respondent. The application was required to be filed within certain specific time lines. The application was not filed. When the application was again listed for hearing on 30th September 2010, the respondent's counsel did not attend court. The court ordered the petitioner to proceed with the application, the absence of the respondent notwithstanding. Mr. Gachie, counsel for the applicant urged the court to allow the application with costs.

This court has carefully considered the said application. Judgment was entered in favour of the petitioner. The court declared that the petitioner was entitled to 50% ownership of the properties listed in the application. The petitioner however wishes that she be declared to full and exclusive ownership of some of the properties listed in the application. The petitioner states that the respondent has refused to transfer the said properties to her name as ordered by the court. The respondent has not challenged the said decision by seeking the stay of execution of the said judgment. The petitioner has a decree issued in her favour which so far she has not been allowed by the respondent to benefit from. It is clear to the court that the order craved for by the petitioner is merited. This court has a duty to issue orders to enable its judgment to be given effect to.

In the premises therefore, this court hereby issues an order vesting the suit properties i.e. LR.No.15065/17, Off Ndalat Road, Karen, Hardy, LR.No.Nairobi/Block 72/361 Onyonka Estate, Langata(House No. C 30), the piece of land in Kibwezi and Motor vehicle Reg.No.KAM 853C to the respondent. The petitioner will not claim any other properties from the respondent. By having the above properties vested in her name, the petitioner has forfeited her rights over the other properties that the court had declared she is a 50% joint owner. The respondent shall be served with this order and if he does not execute the conveyancing documents transferring the suit properties to the respondents within forty five (45) days of the date that he shall be so served, the deputy registrar of this court shall be at liberty to execute the said conveyancing and transfer documents on behalf of the respondent. There shall be no orders as to costs. It is so ordered.

DATED AT NAIROBI THIS 26TH DAY OF NOVEMBER, 2010

L. KIMARU
JUDGE