



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Suit 21 of 2004**

**AGNES A. KWAMBOKA ..... APPLICANT**

**versus**

**ERADION OCHENGE**  
**MOKUA .....RESPONDENT**

**JUDGMENT**

Agnes Askha Kwamboka who is the applicant in this cause, and Eradion Onchenge Mokua ('the respondent') got married on 4.9.1976. The applicant, who claims that her husband chased her away from their matrimonial home in Kileleshwa, Nairobi over five years ago, now seeks for a declaration that the following properties which were acquired during the subsistence of their marriage are held jointly in equal shares.

The said propertied, which I shall refer to as the subject properties, are:

- LR 209/8763 in Nairobi.
- Nairobi/Block 72/746

She also wants her suitcase which contains her personal effects back.

The applicant who worked for the Ministry of Transport between 1972 and 1987 as a receptionist earning a monthly salary of Shs.5,000/=, testified that she contributed indirectly towards the acquisition of the properties and to their development too, for she used her salary to buy food, clothes for their children and pay for utilities. It was her evidence that she resigned from employment and worked in their business of wholesale and retail at Nairobi's South B, and though she was one of its shareholders, she did not draw any salary. The proceeds from the said business were deposited in an account which she held jointly with the respondent, with Transnational Bank where the respondent worked at the material time, and which account he managed. They held another account jointly with Consolidated Bank in which she made several deposits. They used the funds from the accounts for payment of school fees. She claims that her husband used the rest for his personal gain. He later resigned from employment and took over the management of the aforesaid shop, but it was closed in the year 2000 for what she claims was his mismanagement. He did not take up employment thereafter.

She operated a clothes shop within the city, between 1999 and the year 2000, from where she earned a monthly sum of Shs. 15,000/=, but relocated to Kingsway House between the year 2003 and 2004, from where she operated a hair form which she Shs.10,000/= per month, and it was her evidence that she took

over the payment for electricity supply during the year 2002 until March 2003. She also paid for their house telephone charges in the year 2003 as well as university school fees for their son Michael who was studying in Australia between 1998-2001, but who had to relocate to the U.S.A in the year 2002, which costs she met. She also paid fees for their daughter Edna who studying in the U.S.A, and met the travel expenses for their two children who visited their siblings in the U.S.A. Four of their children are currently based in the U.S.A. she lives with the fifth one.

She informed the court that if her prayers are granted, she will settle for Nairobi/Block 72/746, which is situated in Southlands Estate, Nairobi, which she estimates is of a lower value than LR 209/8763, which is situated in Kileleshwa Nairobi. He collects the rental proceeds from both properties.

The respondent chose not to call any evidence, and when called upon to make his submissions, Mr. Wena who appeared for him, informed the court that he had no instructions to make any submissions, not even on issues of law.

Mrs. Thongori, who appeared for the applicant was of the view that since the subject properties are jointly owned, they ought to be so held in equal shares, and she relied on the decisions *Kivuitu v Kivuitu* [1991] 2 KLR 241 at page 24, *Kamore v Kamore* and another CA (Nrb) 63 of 1998 at page 7, *Essa v Essa* CA No. 101 of 1995 at page 185, *Echaria v. Echaria* CA 75 of 2001 and *Njoroge v Njoroge* CA (Nrb) 44 of 1999, in which indirect contribution by a party towards the acquisition and/or development of property which is acquired during the subsistence of the marriage is taken into consideration during division of the matrimonial properties.

I have taken the applicant's uncontroverted evidence into account and there is no doubt that the subject properties were acquired in the eighties, during the subsistence of their marriage. There is also no doubt that the applicant contributed to the financial management of their home and that she met the costs of the education and related expenses for their children, which contribution cannot be disregarded, and I do find that though it was indirect, she nevertheless contributed towards the acquisition of the subject properties, and that in the circumstances, she entitled to an equal share of the properties.

Having indicated that she will settle for Nairobi/Block 72/746, I do order that she is entitled to it and that it be transferred to her, she shall see to the transfer of her share in LR 209/8763 in Nairobi to the respondent. The transfers shall take place with immediate effect.

She shall also have her suitcase with her personal effects back.

The respondent shall bear the costs of the transfers.

He shall also bear the costs of this suit.

Dated and delivered at Nairobi this 6<sup>th</sup> day of August 2009.

**JEANNE GACHECHE**

**Judge**

Delivered in the presence of:

For the applicant – Miss Machio

For the respondent - No appearance