



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Suit 21 of 2003**

**STANLEY KITHIA MIRITI ..... PLAINTIFF**

**VERSUS**

**HELLEN NKIROTE KITHIA ..... DEFENDANT**

**RULING**

The marriage between STANLEY KITHIA MIRITI ('Stanley') and HELLEN NKIROTE KITHIA ('Hellen') who are the parties herein was dissolved on 25/5/2001.

The two held several immovable properties jointly and following an application by Stanley, Kubo J, delivered his judgment on 21/12/2004 and a decreed issued in the following terms inter alia:

- (1) *'THAT properties L.R. NO. NBI/BLOCK/60/303 Ngei Phase Nairobi (Ngei House) and Ruiru/Ruiru East Block 13/2500 (Mwalimu shamba) are hereby declared joint properties between the applicant and the respondent in equal shares'.*
- (2) *'THAT each of the above properties to be valued by a valuer to be mutually agreed between the parties and each party to have the option of purchasing the other party's 50% share of each property. In the event that the parties fail to agree on which of them should purchase the other's 50% share, the property in question to be sold and the proceeds of sale to be divided equally between the parties'.*
- (3) *'THAT for the avoidance of doubt, either party is hereby restrained by himself, by servant and/or agents from alienating and/or in any other way encumbering the properties at 1 above pending compliance with order 1 and 2 above'.*

It is now evident that the parties have yet to comply with the decree for Stanley, who I shall now refer to as 'the applicant', moved this court on 19/1/2007 in an application in which he sought the orders to compel Hellen ('the respondent'), her agents, tenants, servants, and/or employees to vacate the Ngei House ('the subject property'), and secondly an order to compel Housing Finance Company of Kenya Ltd.,

('HFCK') to release the title documents to the subject property to the applicant. Ha also prays for costs.

He relies on the grounds that though he is desirous of disposing of the subject property to avert the accrual of high penalties for outstanding land rates and rents, the respondent took over it's possession exclusively and forcibly in June 2003, which property she has currently leased out to third parties; that she has denied him and his agents access for purposes of complying with the above orders. His ground

against HFCK is that it remains in possession of the documents of title, and has refused to release them without Hellen's authority.

Hellen opposes the application and has deposed at length.

Though served with the hearing notices and though the respondent was present in court, her counsel did not appear and the matter proceeded in the absence of her counsel.

I have nevertheless considered the pleadings herein an especially the aforementioned judgment, as well as Miss Ithondeka's submissions.

It is also important to note that Hellen's efforts to have Justice Kubo's judgment and resultant decree set aside were unsuccessful, for her application was dismissed by Dulu J. on 16/7/2006. She did not prefer an appeal and in my humble opinion, Justice Kubo's judgment must be adhered to, to the letter, yet in her reply Hellen deposes inter alia that '*there was no order by the court stopping me from staying in the house (Ngei House) which happens to be the only remaining matrimonial property in my hands after the applicant took possession of all other properties acquired during the subsistence (sic) of our marriage including but not limited .....*', which is a misconception, for the judgment and decree were for all purposes and intent very clear, in that each party was restrained by themselves, by servant and/or agents from alienating and/or in any other way encumbering the subject property pending compliance with the two other orders, which I have mentioned hereinabove.

I therefore find that she has no valid reason whatsoever to act in the manner that she has, for court orders are not made in vain, they must be adhered to fully, no matter how unpalatable they are. I do in the circumstances find this application meritorious and I do grant the applicant an order in line with his first prayer. I have also considered the letters by HFCK, which were exhibited to the applicant's affidavit, in which it states that it can only release the document upon receipt of the respondent's authority. It having been now ordered that the subject property be disposed of, and now that it has been ordered that an order do issue in line with the applicants first prayer. It is only proper that subject to payment of all outstanding dues, HFCK do release all the documents of title to the subject property to the applicant to enable him comply with the orders of this court.

It is so ordered.

The respondent shall bear the costs of this application.

Dated and delivered at Nairobi this 9<sup>th</sup> day of December 2008.

**JEANNE GACHECHE**

**Judge**

Delivered in the presence of: