



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**CIVIL CASE 4684 OF 1987**

1. Land and Environmental Law Division

2. Subject of main suit: Land/matrimonial property LR No.xxxx Tigoni 110 acres

Finalized 27.10.93 by Shields J ruling that matrimonial property be divided in equal share.

ii) Appeal to court of appeal five judges.

Tunoi, Okubasu, Githinji Waki Deverell JJA

Appeal allowed instead of 50% share to  $\frac{3}{4}$  to  $\frac{1}{4}$  shares appellant to transfer 25 acres.

Sub-division and transfer share be paid equal.

3. Civil Practice and Procedure – Directions of court.

a) The original defendant/husband prays that title deed be released to him to transfer 25 acres – 24 September 2007.

b) Original plaintiff/wife objects as she has filed application to court of appeal to clarify method of apportion.

c) Directions

i) This is a matrimonial cause and file should have been before the Family Court Division.

ii) That the original wife plaintiff has filed application seeking directions of exact manner of sub-division.

iii) That application of 24 September 2007 be stayed under section 6 Civil Procedure Act pending Court of appeal application by plaintiff/wife.

iv) That this file at all times be placed before the Family Division.

4. Case law:-

a) PNE v PME

Hccc4684/87, Shields J.

b) PME v PNE Ca 75/01

(Tunoi, Okubasu, Githinji , Waki, Deverell JJA)

5. Advocates:

A. Njoroge of Njoroge A. & Co. Advocates for the plaintiff/respondent - present

B. Nganga holding for Kamau Kuria of Kamau Kuria & Co. Advocates for the defendant/applicants – present

**PNE..... PLAINTIFF**

**VERSUS**

**PME.....DEFENDANT**

**RULING**

1: Directions of the court.

I: PNE and PME began this suit involving matrimonial property after the two were divorced in 1987. Shields J held that the matrimonial property consisting of Land LR No.xxxxTigoni 110 acres be divided amongst the couple in equal shares following the Kivuitu v Kivuitu (1991) 2 – KAR 241 on 27 October 1993 equally.

2. The original defendant/husband appealed to the court of appeal. A five bench was set up whereby they overruled the decision of Kivuitu v Kivuitu supra and award to the husband  $\frac{3}{4}$  and the wife  $\frac{1}{4}$  of share of the property instead of 50% each. They awarded the costs of conveying and transfer to be paid equally amongst the two at 50%.

3. The defendant husband filed an application dated 24 September 2000 seeking orders to compel the wife/plaintiff to release the title deed. Before the application was heard the wife/plaintiff informed the court that there is pending an application to the court of appeal to be able to clarify the method of apportionment first. She sought the courts directions.

4. The direction of the court are:-

i) That this is a matrimonial cause concerning property. The file at all times should be placed before the family court Division.

ii) As the wife/plaintiff is before the Court of Appeal this court stays the application of 24 September 2007 under section 6 Procedure Act pending the court of appeal application by plaintiff wife.

iii) There will be costs in the cause.

**Dated this 13<sup>th</sup> day of November 2007 at Nairobi.**

**M.A. ANG'AWA**

**JUDGE**

A. Njoroge of Njoroge A. & Co. Advocates for the plaintiff/respondent - present