



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Suit 37 of 2002 (OS)

SALOME WANGENDO KOIGU.....PLAINTIFF/RESPONDENT

VERSUS

SIMON PETER KOIGU DEFENDANT/APPLICANT

RULING

By chamber summons dated 10.02.06 and filed the same day, the defendant applied for the following orders:-

1. That the plaintiff be and is hereby ordered to pay to the defendant the sum of Kshs.31,500/= being her share of contribution for the expenses of subdivision of Plot No.L.R. Kirinyaga/Gathigiri/454 and incidental expenses within seven (7) days, and in default the plaintiff to forfeit her right over the said property.
2. That the plaintiff be and is hereby ordered to buy out the defendant from plot No.C 177 Mwea/Ngurubani together with the machinery and developments thereon by paying him a sum of Kshs.800,000/= which is the 50 % value of the said property within seven (7) days, in default the property be sold and the proceeds shared equally between the parties.
3. That the costs of this application be borne by the plaintiff.

The grounds upon which the application is made are that:-

a) A consent order was recorded on 12.02.04 where it was provided, *inter alia*, that:

- i. L.R. No. Kirinyaga/Gathigiri/454 be shared equally between the parties.
- ii. L.R. No. C 177 Mwea/Ngurubani together with the machinery and developments be valued and shared equally between the parties.
- iii. The parties do share equally the costs of valuation, sub-division and registration.

b) The plaintiff has failed, refused and/or declined to make her contribution for the sub-division of the property as stipulated thereby delaying completion of the process.

c) The property stipulated in No. (a) (ii) above has been valued at Kshs.1.6 million and the plaintiff is supposed to buy out the defendant by paying him a sum of Kshs.800,000/= being 50 % of the value thereof as was agreed between the parties. However, the plaintiff has failed, refused and/or declined to do

so.

The application is supported by the defendant's/applicant's affidavit sworn on 10.02.06.

At the hearing of the application, the defendant/applicant was represented by learned counsel, Mr. A.P.O. Ogutu while the plaintiff/respondent was represented by learned counsel, Mrs. P.M. Ndungu.

Defendant's/applicant's counsel informed this court about a consent order recorded between the parties issued on 12.08.04; that the parties had complied with orders 2 and 4 regarding registration of the properties thereunder in the respective parties' names but that problems had arisen regarding orders 1 and 3, which are tied to order 5. These three orders are in the following terms:

- '1. That the following matrimonial properties be shared as follows: LR. Kirinyaga/Gathigiri/454 be shared equally between the plaintiff and the defendant.**
- 3. That plot No.C177 Mwea/Ngurubani together with the machinery and development thereon be valued and shared equally between the plaintiff and the defendant.**
- 5. That the parties to share equally the costs of valuation, sub-division and registration.'**

It was the defendant's/applicant's case that the plaintiff/respondent has failed to make her contribution of 50% towards survey and sub-division expenses, hence the present chamber summons application.

The plaintiff/respondent opposed the application and there is her replying affidavit sworn on 17.03.06 in support of that opposition. She contended that the application is bad in law as in her view the defendant/applicant rushed to court prematurely before exhausting available machinery for resolving outstanding issues. It was the plaintiff's/respondent's case that the defendant/applicant owes her money in respect of his contribution towards the cost of educating their daughter; that the defendant/applicant has come to court with dirty hands; and that his application should be dismissed.

I have given due consideration to the parties' respective cases and arguments.

The application now before this court relates to division of matrimonial property. The parties entered into a consent on 12.02.04 regarding distribution of their matrimonial properties between themselves. The consent order was issued on 12.08.05. The orders is clear that expenses towards survey, sub-division, valuation and registration of the various matrimonial properties in their respective names were to be shared equally. The modalities for the sharing of expenses do not, however, seem to have been clearly spelt out. What emerges from the pleadings herein is that the parties have adopted the attitude of being negative towards and not to co-operate with each other, thereby blocking or delaying finalisation of the distribution of the matrimonial properties in question. The parties are being petty and wasteful of valuable time. I am constrained to observe that the plaintiff respondent even attempted to drag into the present proceedings an issue of alleged indebtedness of the defendant/applicant to her, said to have arisen from a divorce cause before a subordinate court. This court is not seized of the facts relating to the divorce cause and the indebtedness said to arise therefrom is not part of the consent order herein. It was not legitimate for the plaintiff/respondent to drag the alleged defendant's/applicant's indebtedness into the present proceedings as the plaintiff/respondent has attempted to do. The parties herein ought to show greater maturity than displayed so far.

I make the following orders:-

- a) The parties are hereby given 30 days to file mutually agreed costings for sub-division of L.R. Kirinyaga/Gathigiri/454 referred to at order 1 above into two portions of equal value and for registration of the resultant sub-divisions in their respective names.
- b) The parties are hereby given 30 days to file mutually agreed costings for sub-division of plot No. C 177 Mwea/Ngurubani plus machinery and developments thereon referred to at order 3 above into two

portions of equal value and

- c) for registration of the resultant sub-divisions in their respective names.
- d) Costs of the present application shall be in the cause.
- e) Mention on 31.07.06 for further orders.

Orders accordingly.

Delivered at Nairobi this 23rd of June, 2006.

B.P. KUBO

JUDGE