



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

**Civil Suit 5 of 2002**

**F K O M ..... APPLICANT**

**VERSUS**

**M W O M ..... RESPONDENT**

**JUDGMENT**

The parties herein are husband and wife and were married on 7<sup>th</sup> December, 1974 under the African Christian Marriage and Divorce Act (Cap 151 Laws of Kenya).

They were blessed with five children all of whom are presently adult persons.

The marriage eventually dissolved vide an order in D.C. No.32 of 2000.

Before the dissolution the Petitioner herein had filed this Origination Summons under Section 17 of the Married Women's Property Act, 1882 of England (hereinafter referred to as '*the Act*') which by dint of the provision of Section 3(1) of the Judicature Act, (Cap 8 Laws of Kenya) became a statute of general application in England and thus became a part of Laws of Kenya.

The Petitioner under Section 17 of the Act seeks declaration that the properties (movable and immovable) acquired by joint funds and efforts of the Applicant being following properties:

- (i) L.R. Nos.5335/3 and 5335/4 Endebes – 20 acres**
- (ii) L.R. No.Bukhayo/Mundika/1376 – 0.45 Hectares**
- (iii) South Teso/Angoromo/1085 – 1.01 Hectares,**

are jointly owned by the Petitioner and the Respondent.

She further sought amongst other prayers an order of division of the said properties.

At the outset, I must point out that although she has referred movable properties in her first prayer, no averments of any of such properties are made before or during these proceedings. Thus I shall devote my observations and findings in respect of the aforesaid three properties. The counsel from both sides agreed that the Originating Summons be heard and determined on submissions relying on affidavits.

Mr. Ngetha the learned counsel for the Petitioner relied entirely on the Originating Summons dated

10<sup>th</sup> August, 1998, supporting affidavit sworn by the Petitioner on 8<sup>th</sup> July, 1999 and a replying affidavit similarly sworn on 15<sup>th</sup> June 2006.

In her affidavit in support, the Petitioner has averred that throughout the subsistence of the marriage, the parties have maintained a joint account and the salaries of the couple were received in the said Account. The family expenses were met from the same and the savings were then injected into the family investments.

She further averred that the first property being [particulars withheld] was bought on 12<sup>th</sup> April, 1977. The second property being Endebes [particulars withheld] was purchased in 1980. She also averred that the property being [particulars withheld] measuring 0.45 hectares was bought in the first two years of marriage through joint efforts.

It is not in dispute that the Petitioner has not been a housewife alone but was working being an Agriculturist by profession earning her salary as a civil servant. The Respondent has also been a Civil Servant. Her claim of Joint Account as specified hereinbefore has not been controverted.

She has also specifically averred that the Respondent could not have been able to purchase the aforesaid properties through his own salary. She also averred her other contributions apart from her financial contributions. She has shown that she had to take loan to subsidise the joint income as shown in annexure 'c' which is one of her pay slips.

She also averred that she cultivated the land at Endebes being an agriculturist and was able to receive good harvest enabling them to sell its produce to Produce Board at Kitale. She developed problem of back due to the said extra work but still gave birth to five children and looked after them and raised them till she was kicked out of the matrimonial home.

In his first replying affidavit shown on 15<sup>th</sup> August, 2003 the Respondent, while not specifically denying those specific averments, deponed that the South Teso property was bought by him alone and the Petitioner contributed Shs.15,000 for Endebes property. I do note that he has not shown how he purchased the South Teso property on his own and what was the purchase price of Endebes property.

In his further affidavit sworn on 22<sup>nd</sup> May, 2006 he deponed that the purchase of a portion Endebes property [particulars withheld] has not been concluded and he thus does not have any legal title. He also proposed that the other two properties be sold, giving first preference to their children and the proceeds to be divided equally between them. He has not shown any documents to prove his averment.

On the basis of the averments in the proceedings, the issues to be determined by me are,

- 1. Whether the three properties in question were acquired during the subsistence of the marriage,**
- 2. Whether the Petitioner, directly or indirectly contributed to the acquisitions and development of the three properties.**
- 3. What is the portion of her contribution.**

I have detailed the facts of the case. Considering the same I can easily find, and hereby do so, that the properties were acquired during the subsistence of the marriage as well as that the Petitioner contributed both directly and indirectly in acquisition and development of the same.

As regards the Endebes property, it is on record that the parties (family) herein have been given occupation of the share of the property being 20 acres. This portion of the land thus does form part of the matrimonial property. The Petitioner shall thus have the same legal and or equitable right over the property as that held by the Respondent.

The Respondent has in his last affidavit sworn on 22<sup>nd</sup> May, 2006 unequivocally agreed that the Petitioner shall be given half share in the remaining two properties. I say so because he has stated that the sale proceeds be divided equally between them.

The Respondent in respect of the Endebes property has agreed the direct contribution of the Petitioner which according to him was Shs.15,000. Be that as it may, he has not denied the fact of joint account and their respective salaries being deposited therein.

He has also not denied the averment by the Petitioner that he was incapable to acquire properties in issue on his own salary. He has neither denied the cultivation by the Petitioner of Endebes property nor receipt of income derived from the sale of its produce. He has not denied the birth of the five children and Petitioner's efforts in raising them.

My findings thus are:-

- 1. That the three properties specified hereinbefore were acquired during subsistence of the marriage between the parties.**
- 2. That the Petitioner contributed, both directly and indirectly towards the acquisition and development of the said properties.**
- 3. The said properties are declared to be owned jointly by the parties in equal shares.**

The counsel fell short of making submissions on proposals of actual division of these properties. I shall thus invite them to do so either by consent or by making relevant submissions.

The Respondent to pay the costs of this suit.

Orders accordingly.

Dated and signed at Nairobi this 21<sup>st</sup> day of September, 2006.

**K.H. RAWAL**

**JUDGE**

**21.9.06**