



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KISII

CIVIL CASE NO.132 OF 2000

ESTHER NYABOKE KENGERE PLAINTIFF

VERSUS

KENGERE NDEMA DEFENDANT

RULING :

The Applicant/Defendant seeks court orders striking out the suit against him and also for aggravated damages and cost.

The plaintiff is the wife of the respondent who also has another wife. She came to court seeking the respondent to cede to her part of their land which they acquired during the marriage.

The applicant submitted that the respondent is still married to him. The marriage has not been dissolved or broken down. There is no petition for divorce filed. For court to order him transfer portion of his property to the plaintiff is like dealing in succession of his Estate when he was still alive.

Respondent submitted that the applicant has two wives. He divided the family land into two and gave the respondent a portion and her house. The other portion was left to him and the other wife. He sold part of it and fears he will sell even the portion he was occupying.

The issue simply is whether a woman whose marriage is still subsisting can come to court under s.17 of Married Women Properties Act and demand a share of the property. S.17 of M.W.P.A. especially the first part is very clear and in fact presupposes that an application for property should be filed when the marriage is still or and not to wait for it to be dissolved. It provides that “every married woman” can apply to court for distribution of property. That is why the provision gives a rider that if the marriage is already dissolved then one has to move the court within 3 years of the dissolution of the marriage. The plaintiff is therefore perfectly right to come to court. It is during the hearing the issue of whether or not she is entitled to any property will be canvassed

The authorities cited were not of much issue. They mostly dealt with claims after the marriages had been dissolved. All in all I find application has no merit and it is dismissed with costs.

Dated and delivered on 23rd February 2004.

KABURU BAUNI

JUDGE

23/2/04

Mr. Ondika holding brief for Mr. Momanyi.

Mr. Oguttu for Mr. Ombachi.

KABURU BAUNI

JUDGE

23/2/04