



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 38 OF 2002

MARY WAIRIMU KIRANGA APPLICANT

VERSUS

FRANCIS PETER KIRANGA..... RESPONDENT

JUDGMENT

By an Originating Summons dated 14th August, 2002 the plaintiff/applicant Mary Wairimu Kiranga, sued her husband Francis Peter Kiranga under Section 17 of the Married Women Property Act of 1882 of England, the Judicature Act, Section 3 and Order 39 of the Civil Procedure Act, seeking various declaratory orders relating to the matrimonial property acquired and or developed by joint effort during their marriage.

The defendant denied the claims in his replying affidavit dated 28th August 2002 and went a head at para 9 to give details of how the properties were acquired.

The defendant swore a further affidavit on 13th November 2002.

Mary the applicant replied to her husband's further affidavit, by a further replying affidavit dated 2nd December 2002. The advocates representing the parties took dates for the hearing of the Originating Summons.

Prior to that on 21st November 2002 I had made the following orders,

1. "Hearing is to be by way of affidavits and submissions",
2. "The parties i.e. dependents of affidavits to be present I court, should there be need to have them cross examined".

On the day of the hearing of the Originating Summons, only the applicant and her lawyer, appeared in my chambers, but not the defendant/respondent and his lawyer did not appear. They were called out several times but, there was no response. The court file showed that the date had been taken by consent of both parties at the Registry. I therefore proceeded to hear submissions from M/s Martha Koome, counsel for the applicant.

She submitted that the shares in the 3rd company listed in para 2(iii) of the Originating Summons as Makfam Investments Ltd, were transferred to the children in the year 2002.

As for the 2 other companies, i.e. Gramma Villa Ltd and Molo Millers Ltd, the applicant claims share as a beneficiary, so is the house in South C, where she lives with one child. The other children live overseas.

In prayer 3 of the Originating Summons, the applicant seeks a declaration that the respondent holds shares in 10 (ten) acres of land at Molo, 3 (three) acres of land in Elburgon.

In para 4, four motor vehicles are listed, but they have since been transferred to the company belonging to the children.

The advocate submitted further that the children have filed a suit as Directors of Makfarm Investments Ltd v Francis Peter Kiranga their father and the respondent in this suit.

In the suit, the 3 children, Benard Kamau Kiranga, Judy Njambi Kiranga and Edward Karega Kiranga, who are the Directors of Makfam Investments Ltd disclosed at para 3 that the company is the registered proprietor of

(a) L.R No.14675 (Original 7022/6/19) situated in Kiambu.

(b) L.R No. 209/10721/18, situated at Nairobi area

(c) Motor vehicles

(i) KAE 278 K Isuzu Lorry

(ii) KAM 080 B Isuzu Pick up

(iii) KAG 979 N Musso

(iv) KAE 005U Peugeot 405.

The children's suit was filed on 24th October 2002. Its number 1618 of 2002. They are seeking various prayers as shown in the plaint. These are prayers which would effectively maintain the "status quo" as far as all properties listed in the plaint are concerned.

Mrs. Koome submitted that the properties claimed by the applicant were acquired by the joint efforts of husband and wife. She contended that the applicant contributed directly and indirectly to the acquisition of the properties as she has always worked gainfully and earned a salary. That the South C property was bought through her employer. She urged the court to enforce the orders.

Commenting on the replying affidavit as well as the further affidavit as well as the further affidavit, Mrs. Koome submitted that the issues raised therein, ***"do not disentitle our client from the orders sought. The respondent is saying that the applicant did not contribute to the acquisition of the properties, yet all the properties were acquired during the marriage"***.

Counsel submitted further that her client the applicant does not need to have been divorced in order to seek declarations regarding shares in property and companies, which were acquired during marriage.

She drew the court's attention to para 9 of the replying affidavit dated 28th August, 2002, where the respondent acknowledged that the plaintiff/applicant made direct cash contributions to the purchase of some properties during the marriage.

Mrs. Koome wound up her submissions by saying,

"This is a woman who has worked and should be entitled to share equally".

She also drew the court's attention to the attached Gama Villa Ltd, which showed that the applicant and respondent had a share each. Considering all this, she urged the court to enter judgment in favour of the plaintiff/applicant, in terms of prayer No.2 (i) and (ii) and No. 3 and 6. For No 5, she sought time to file a separate application for execution. She also prayed for costs of the Originating Summons.

The proceedings before the court did not show in anyway that the applicant and the respondent had been divorced. I find therefore that the applicant quite rightly came to court under Section 17 of the 1882 Married Women's Act, an English legislation used in our courts by general application through the Judicature Act. Further, I considered that the averments in the applicant's affidavit showed that the properties in question were bought during the subsistence of the marriage. To some, the applicant made direct cash contribution, and to others, indirect contribution as her affidavit states. From this, I find that she contributed to the purchase of the properties either directly or indirectly. It is for this reason that I proceed to grant orders in terms of prayers 2(i) and (ii), prayer (3) and (6) of the Originating Summons dated 14th August, 2002.

Dated at Nairobi this 8th day of May, 2003.

JOYCE ALUOCH

JUDGE