

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIORBI

DIVORCE CAUSE NO. 90 OF 1997

M M N PETITIONER

AND

N G N RESPONDENT

RULING

Notice of motion dated 14th August, 2001 filed by the Applicant, Nathaniel Gitau Njuya praying for orders

“1.THAT the court be pleased to appoint a receiver for management of the matrimonial properties more particularly described in the schedule attached to this application.

2.THAT the court be pleased to make any further orders and/or give directions as it deems just in the circumstances.”

The application is based on the grounds that divorce has been pronounced in these proceedings and that matrimonial properties have not been shared out and no such application is pending in court; and that the Respondent Margaret Mugure Njuya is virtually in control of the income derived from the properties; and that there are no known liabilities attached to the properties and finally that the Applicant is prejudiced by the prevailing state of affairs.

During the hearing of the Notice of Motion the applicant said that he is praying that his ex-wife takes half and he takes half of whatever income that is being generated by their assets. That is income in the form of money like rent. Shares and the rest of the properties can wait until the time of dividing the assets.

The Applicant was relying on the judgment dated 26th July 2000 and claimed they have been divorced.

He clarified that in the schedule of properties attached to his affidavit, he wanted sharing of the income from the properties listed as number 1 to 4 only.

In opposing the application,Mr. Adere the advocate for the Respondent pointed out that the parties have not yet been divorced and are still husband and wife. They live in their Riruta matrimonial home although the Applicant maintains another woman at Kibera. Because they are not yet divorced, the Applicant cannot get the orders he is seeking as the court should not be used to divide the family and the income of the family which is living together.

Mr. Adere challenged the Applicant to disclose the official registered owner of the properties in question.

He also pointed out that the application was brought under wrong provisions. It has been brought under the Civil Procedure Rules instead of being brought under the provisions of the Matrimonial Causes Act and the Matrimonial Causes Rules. He emphasized that the application is incompetent.

As I agree with Mr. Adere and need not add anything to what he said, this Notice of Motion dated 14th August 2001 be and is hereby dismissed with costs to the Respondent.

Dated this 18th day of April 2002.

J.M. KHAMONI

JUDGE