



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL CASE 1246 OF 96

MARGARET M. GITAU PLAINTIFF

VERSUS

JOSEPH GITAU DEFENDANT

JUDGMENT

It is not disputed that the applicant and respondent are wife and man respectively. They married under customary law.

Sometime in their married life things did not work out too well. From the respondent evidence, his wife walked out on him. In retaliation he married another woman under the African Customary.

He now has two children with her.

The applicant stated that he began selling the properties they acquired together without her consent. She then filed this application seeking for this courts declaration that any immovable and movable property acquired by the joint funds and efforts of the two of them be said to be jointly owned by the two.

She married the defendant and became a housewife looking after their children. They have four in number.

The applicant gave evidence and stated that she gained an interest in business. This was because her husband, who was employed in a factory brought home little money. She began to sell pineapples and made a bit of profit. A shop/kiosk business was set up. Slowly by slowly they acquired property.

What then occurred was the properties were in the names of the respondent. She admitted in cross examination that two separate properties had been in the name of herself. She has since sold them to meet other expenses. The respondent having failed to meet his obligation as required.

The respondent was bitter and spoke of a matatu that had been sold. It transpired that this was not an issue in this case. It further transpired that the parties had other cases involving their matrimonial disputes and hence the sale of the motor vehicle.

The respondent in evidence stated that he had no objection in allowing the properties to be shared. He would however wish that this be in the names of his new wife, himself and the applicant.

I believe that the respondent chose, perhaps out of frustration, to have another wife. The said new

wife did not participate in the acquisition of the said properties. It was most certainly the applicant who contributed very much. She strongly felt that her contribution was important in building up the assets now held with the respondent.

The respondent admitted that the initial money he had given to the applicant, that she contributed by looking after the children, by running the kiosk business which in turn was able to give them income to purchase more assets.

I believe that the contribution of the applicant as a wife/mother and women in the home went a long way in providing the assets that is owned and is in the name of the respondent.

I do not agree that the property be divided into thirds. I believe that the ownership and shares of the property should be at the ratio of 50% to 50%. The respondent should share his 50% with his new wife.

I am aware of the cases relied on by the advocate for the plaintiff.

I would enter judgement for the plaintiff/applicant and do hereby make a declaration that the properties as shown in the annexed affidavit of the applicant is owned by the respondent and applicant jointly.

That the said properties be registered in their joint names.

I decline to make orders for proceed of sale of the properties.

This is because the plaintiff/applicant stated her intention was not to sell but to safe guard her interests.

I award costs of this originating summons to the plaintiff/applicant.

Dated this 20th day of July, 2000 at Nairobi.

M.A. ANG'AWA

JUDGE