



**Orende v Orende (Environment & Land Case 297 of 2013)  
[2022] KEELC 3083 (KLR) (6 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3083 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT & LAND CASE 297 OF 2013  
A OMBWAYO, J  
MAY 6, 2022  
IN THE MATTER OF SECTION 17 OF THE MARRIED WOMEN'S  
PROPERTY ACT (1882)**

**BETWEEN**

**CONCEPTOR AWUOR ORENDE ..... PLAINTIFF**

**AND**

**JOSIA ORENDE ..... DEFENDANT**

**RULING**

1. Conceptor Awuor Orende (hereinafter referred to as the applicant) has come to court for orders:
  1. The Honourable Court do issue orders for the sale of the suit property to enable sharing as had been directed by the court.
  2. Such further and/or other orders be made as the court may deem just and expedient.
2. The application is based on grounds
  - a. That the period given by the court to the parties to agree on who will keep the house and compensate the other has lapsed.
  - b. That the Respondent continues to occupy the property and has refused to give to either buy out the Applicant or agree to the sale of the property and allow for sharing of the proceeds.
  - c. That it is necessary that this court gives necessary orders as per the judgment of the court.
  - d. That the Respondent will not suffer any prejudice if the order for the sale of the property is granted.
  - e. That it is in the interest of justice that the application herein be heard and allowed.



3. The application is supported by the affidavit of the applicant who states:-
  1. That he is the plaintiff/applicant herein hence conversant with the facts of this matter, thus competent to swear the Affidavit.
  2. That following the courts judgment dated 13/7/2016, the court issued further orders on 1/12/2016 detailing the mode of sharing of the suit property.
  3. That her advocate on record complied with the order and her name was added as proprietor alongside, the Respondent.
  4. That the court gave 90 days within which they were to agree on who would buy the other one out and make compensation to the other party.
  5. That since the order was issued the Respondent has ignored all attempts to have the matter settled but continues to occupy the suit property.
  6. That under the circumstances the applicant unable to enjoy the fruits of her judgment as delivered.
  7. That she therefore pray that the court do issue an order for the disposal of the property by way of sale to enable for the sharing of the proceeds on a 50-50 basis.
  8. That she knows of her knowledge that what she has deposed to hereinabove is true within her knowledge; same where otherwise stated, in which event same is true and correct to the best of her information and belief, sources thereof being disclosed.
4. The respondent filed grounds of opposition stated that:
  1. The application is scandalous, frivolous and an abuse of court process.
  2. The applicant is misleading the court in stating that she has made attempts to have the matter regarding the suit property settled between her and the Respondent.
  3. The Applicant has not demonstrated by way of evidence that she has indeed made any attempts to reach a settlement with the Defendant/Respondent on who would buy the other one out and make compensation to the other party.
  4. The Defendant/Respondent has all along been ready and willing to settle the matter with the Plaintiff/Applicant.
  5. The Defendant/Respondent is opposed to the sale of the suit property and to the sharing of proceeds.
  6. Priority should be to either of them to buy out the other as they have children who look up to them for subsistence and inheritance.
5. I have considered the application, grounds of opposition, rival submissions and do find that the parties herein have failed to agree on the mode of disposal of the property. Litigation must surely come to an end. I do hereby order that property number Kakamega/Sergoit/1077 be sold and the parties to share the proceeds equally. Either party has the liberty to pay the other party the value of half share. To enable the parties share the property equally the same to be valued within 30 days from the date of this ruling.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 6<sup>TH</sup> DAY OF MAY, 2022**

**ANTONY OMBWAYO**



## **JUDGE**

This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the Covid-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020.

