



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**(CORAM: CHERERE-J)**

**CIVIL CASE NO. 01 OF 2019 (OS)**

**BETWEEN**

**BMG.....PLAINTIFF**

**AND**

**EKM.....DEFENDANT**

**JUDGMENT**

1. The subject matter in this suit is **LR No. ABOTHUGUCHI/KARIENE/[XXXX]** (Suit Property).
2. **BMG (Plaintiff)** took out an Originating Summons dated 11<sup>th</sup> January, 2019 and filed on even date seeking the following declarations and reliefs based on the Matrimonial Property Act. **THAT:**
  - a) **A declaration do issue that LR No. ABOTHUGUCHI/KARIENE/[XXX] is Matrimonial Property**
  - b) **Plaintiff is entitled to half of LR No. ABOTHUGUCHI/KARIENE/[XXXX]**
  - c) **Costs be provided for**
3. The summons is supported by an affidavit sworn on 11<sup>th</sup> January, 2019 in which the Plaintiff avers that the suit property was bought during the subsistence of the marriage between him and the Respondent. Annexed to the affidavit is a land sale agreement dated 08.01.2013 in the joint names of the parties herein and a certificate of search that demonstrates that a title deed was issued in their joint names on 08<sup>th</sup> January, 2016.
4. By a replying affidavit sworn on 20<sup>th</sup> May, 2019 and filed on 04<sup>h</sup> June, 2019, Respondent denies that the Plaintiff contributed to the acquisition of the suit property and contends that she bought the land for the benefit of the issues of the marriage KK and JM but for the love of the Plaintiff caused it to be registered in their joint names.
5. The Respondent further avers that she has developed part of the suit property and has annexed photographs in support thereof.
6. Defendant accused the Plaintiff of intending to sell the sit property and urged the court to allow the parties to hold it in trust for the two issues of the marriage.
7. Plaintiff's by his further affidavit sworn and filed on 07<sup>th</sup> July, 2020 refuted Defendant's allegation and stated that he was ready to take the undeveloped portion of the suit property.

**Analysis and determination**

8. I have considered the oral evidence, submissions on record and the applicable law.
9. The **Constitution** and the **Matrimonial Properties Act of 2013 (the Act)**, protects family property and underpins the principles of fairness and non-discrimination of a spouse who has made contribution in the manner provided in the Act. **Article 45 (1) (3)** of the Constitution makes provisions regarding the rights of parties during marriage and upon dissolution and anchors the principle of "equal rights" as thus: -

**“Parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage.”**

10. The aforesaid Matrimonial Property Act defines with clarity what constitutes “**contribution**” to mean “**monetary and non monetary contributions and includes-**

**(a) Domestic work and management of the matrimonial home;**

**(b) Child care;**

**(c) Companionship**

**(d) Management of family business or property; and**

**(e) Farm work.**

11. Ownership of matrimonial property is described under **Section 7** of the Matrimonial Property Act as; -

**“Subject to section 6(3), ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition, and shall be divided between the spouses if they divorce or their marriage is otherwise dissolved.”**

12. In this case, the suit property is registered in the joint names of the parties and there is normally a presumption that each party made equal contribution towards its acquisition (See **Kivuitu -v- Kivuitu, [1991] KLR 248.**

13. The presumption is however, rebuttable by either party. The Defendant who contends that the Plaintiff did not contribute to the acquisition of the suit property had the sole duty to rebut the presumption a duty she has failed to discharge.

14. Taking all the factors that are born out of evidence into consideration together with the land sale agreement dated 8. 01.2013 in the joint names of the parties herein and a certificate of search that demonstrates that a title deed was issued in their joint names on 08<sup>th</sup> January,2016, I am persuaded that **LR No. ABOTHUGUCHI/KARIENE/[XXXX]** is matrimonial properties and both parties are entitled to an equal share.

15. I have agonized over whether the suit property should remain in the joint undivided share of the parties. Having heard the parties who are since divorced, and the acrimony they demonstrated towards each other, it is safe to conclude that the interests of justice and harmony do not favour a joint ownership.

### **Order**

16. Having considered the issues raised before me, the orders which commends to me and which I hereby issue are:

**a) A declaration is hereby issued that LR No. ABOTHUGUCHI/KARIENE/[XXXX] is Matrimonial Property**

**b) Both parties are entitled to half share of LR No. ABOTHUGUCHI/KARIENE/[XXXX]**

**c) LR No. ABOTHUGUCHI/KARIENE/[XXXX] shall be partitioned into two equal parts with the Defendant’s share being on the developed portion**

**d) Parties shall jointly share the partitioning costs**

**e) Each party shall bear its own costs of this suit**

**DATED IN MERU THIS 04<sup>th</sup> DAY OF February 2021**

**T.W. CHERERE**

**JUDGE**

**JUDGMENT      CIVIL CASE NO. 01 OF 2019**

**Court Assistant   - Morris Kinoti**

**Plaintiff            - Present in person**

**For Defendant - Ms. Miriti for Gichunge Muthuri & Co. Advocates**