



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

MATRIMONIAL CAUSE NO. 7 OF 2019(O.S)

ENK.....PLAINTIFF

VERSUS

SWW.....RESPONDENT

JUDGEMENT

Brief facts

1. The plaintiff has instituted this suit vide Originating Summons dated 1st July 2019 seeking orders that L.R. No. Laikipia Tigithi Matanya Block [...] is matrimonial property and that he is entitled to 50% share of the said property registered in the defendant's name.
2. In opposition to the originating summons, the defendant filed a Notice of Preliminary Objection dated 12th July 2019 and a replying affidavit.
3. The matter came up for hearing on 23rd March 2021 and the parties herein recorded two consent orders that:-
 - a) Judgement delivered on 27/09/2009 in Divorce Cause No. 4A of 2019 and the decree absolute be and are hereby produced in evidence and that the Originating Summons dated 1st July 2019 be deemed properly.
 - b) The originating Summons dated 1st July 2019 is hereby amended in paragraph 1 and 2 to read L.R. Laikipia Tigithi Matanya Block [...] instead of Laikipia Tigithi Matanya Block [...]and that the preliminary objection dated 12th July 2019 be and is hereby marked as withdrawn.

The Plaintiff's case

4. The plaintiff gave evidence stating that he works as a police officer attached to the Presidential Escort Unit being employed on 2/9/1995. He further adds that he relies on the originating summons, his supporting affidavit and the documents attached to the originating summons to support his case.
5. The plaintiff testified that in 2012, the defendant was a housewife and entirely depended on him for her maintenance and upkeep. The plaintiff said that he acquired L.R. Laikipia Tigithi Matanya Block [...] in 2012 and built the matrimonial home on the suit property. He further stated that the defendant did not contribute any funds towards the purchase of the said property. At the time of acquiring the property, the plaintiff says that he was in the United States of America(USA) undertaking a training and that he sent two of his officers namely CI David Maina and CPI Isaac Chumba who accompanied by the defendant to go purchase the suit property in Nanyuki. However, the defendant did not directly deal with the purchase of the property in as such. The plaintiff further added that he consented to the suit property being registered in the name of the defendant for her to hold in trust for herself and for him.
6. The plaintiff seeks for orders that he is entitled to 50%share of the suit property and that the defendant to retain 50% to cover her non-monetary contribution. He thus seeks a declaration that he owns 50% share of the suit property.

The Defendant's case

7. The defendant gave evidence that she is divorced from the plaintiff since 2017 and that she is the registered owner of L.R Laikipia Tigithi Matanya Block [...]. Notwithstanding her defence on record, the defendant supported the plaintiff's evidence by stating that she had no objection to the plaintiff getting to 50% share of the suit property.

8. The defendant stated that she does not wish to pursue paragraph 9 of her replying affidavit regarding other properties that the parties own.

9. The parties herein opted not to put down written submissions.

Issues for determination

10. After careful analysis of the evidence and other material before the court, I opine that the two main issues for determination are as follows:-

a) Whether L.R.Laikipia Matanya Block [...] is matrimonial property;

b) Whether the plaintiff is entitled to a 50% share of the said property.

The Law

11. The law applicable in this case is the Constitution of Kenya Article 45 and the Matrimonial Property Act, 2013. Decided cases will also be applied where the facts allow.

Whether L.R Laikipia Tigithi Matanya Block [...] is matrimonial property

12. Section 6 of the Matrimonial Property Act 2013, defines matrimonial property to include the matrimonial home or homes, any household goods in the home or homes or any other property jointly owned and acquired during the subsistence of the marriage.

13. Basically, for property to qualify as matrimonial property, it ought to have been acquired during the subsistence of the marriage between the parties unless otherwise agreed between them that such property would not form part of matrimonial property.

14. In the present case, it is clear from the parties' evidence that the suit property L.R Laikipia Tigithi Matanya Block [...] where matrimonial home sits is matrimonial property. Both parties agree that the suit property was acquired during the subsistence of their marriage.

Whether the plaintiff is entitled to 50% share of the suit property

15. Having established that the suit property is matrimonial property, the next issue for determination is the share that each party is entitled to.

16. Article 45(3) of the Constitution of Kenya is instructive on this. It provides:-

“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”

17. This principle is echoed by Section 3(2) of the Marriage Act and further recognized by the Court of Appeal in the case of **Agnes Nanjala William vs Jacob Petrus Vander Goes No. 127 of 2011(UR)** where the Court of Appeal observed that Article 45(3) of the Constitution gives parties to a marriage equal rights before, during and after a marriage ends.

18. The Matrimonial Property Act defined the term contribution as follows:-

“contribution” means monetary and non-monetary contribution and includes:-

a) domestic work and management of the matrimonial home;

b) child care;

c) companionship;

d) management of family business or property;

e) farm work.

19. Matrimonial property is defined as property acquired during the marriage whether registered in the name of one spouse or not.

20. In her defence in form of a replying affidavit the defendant opposed the claim of the plaintiff of entitlement to half share of L.R. Laikipia Tigithi Matanya Block [...] and also added that the parties have acquired other properties not mentioned in this suit namely:-

a) A plot in Juja

b) Two motor vehicles registration numbers KBT [...] Make fielder and KBT Probox which vehicles are registered in the name of the defendant.

21. During the hearing of the case, the defendant in her evidence conceded to the plaintiff's claim of half share of the land L.R. Laikipia Tigithi Matanya Block [...] and gave no evidence at all on the other properties she had mentioned in her defence.

Determination

22. This case as it turned out during the hearing is that the claim of the plaintiff was not contested. I have considered the relevant law and the evidence of the parties herein in making the determination.

23. Consequently, I hereby enter judgement in favour of the plaintiff in the following terms:-

a) That a declaration be and is hereby made that L.R. Laikipia Tigithi Matanya Block [...] is matrimonial property and that the parties are entitled to equal shares of 50% each.

b) That each party shall meet their own costs.

24. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT NYERI THIS 6TH DAY OF MAY, 2021.

F. MUCHEMI

JUDGE

JUDGEMENT DELIVERED THROUGH VIDEO LINK THIS 6TH DAY OF MAY 2021.