



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

CIVIL CASE NO. 17 OF 2020

ROO.....PLAINTIFF

VERSUS

EOO.....DEFENDANT

JUDGMENT

1. The plaintiff ROO and the defendant EOO met in February 2015. In the same year they begun to cohabit and in September 2016 they formally married under the **Marriage Act**. They lived together up to December 2018 when they separated. On 30th January 2020 the marriage was dissolved by the Nairobi Milimani Chief Magistrate's Court in **Divorce Cause No. xxx of 2019**. A decree absolute was issued on 2nd March 2020.

2. In the originating summons dated 18th June 2020 the plaintiff pleaded that while they were married they jointly acquired the following property:

1. 4 parcels of land;
2. Outlander Mitsubishi car;
3. matrimonial home building;
4. [particulars withheld] Enterprises Ltd;
5. Recliner 7 seater;
6. Dining set (4 seater);
7. Wall curtains;
8. Red and white carpet;
9. Royal blue wall to wall carpet;
10. Black and Red Carpet;
11. 42" Samsung LED TV;
12. Home Theatre System Sony;
13. Dispenser;
14. Microwave;

15. LG Grey Fridge;
16. Ramtons 4 Burner Cooker;
17. LG 5 KG shite Washing machine; and
18. Car bought for his parents form the company money xxx xxxx

Her case was that, while married, each party was working and had directly and indirectly contributed to the acquisition of the property. She sought to be declared the sole owner of 4 acres of land at [particulars withheld] in Homabay. In respect of the rest of the property she asked for an order for –

“a just and equitable distribution”

over it. The entire property was said to be worth Ksh.15,000,000/=.

3. The parties went to mediation under the Court Annexed Mediation and reached a partial settlement agreement over most of the property. They were not able to agree on the following properties: -

- a. matrimonial house located at [particulars withheld](building only),
- b. motor vehicle [particulars withheld];
- c. motor vehicle [particulars withheld]; and
- d. Recliners seat.

The Court has been asked to determine if these were matrimonial property, and whether the plaintiff had contributed to their acquisition and/or improvements.

4. **Section 6 of the Matrimonial Property Act, No. 49 of 2013** defines matrimonial property to mean: -

- “a) the matrimonial home or homes;**
- b) household goods effects in the matrimonial home or homes; or**
- c) any other immovable and movable property jointly owned and acquired during the subsistence of the marriage”**

The emphasis is that matrimonial property is property, immovable or movable, that was jointly owned and acquired during the subsistence of the marriage. A party seeking a declaration, or share, in respect of matrimonial property has to prove that he/she contributed to its acquisition and/or development. Under **Section 2** of the **Act**, 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; and**
- e) farm work.”**

For the purposes of the **Act**, family business means any business which:

- “(a) is run for the benefit of the family by both spouses or either spouse and**
- (b) generates income or other resources wholly or part of which are for benefit of the family.”**

5. **Section 7** of the **Act** provides that:

“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.”

6. Matrimonial property that is acquired by joint venture or effort during a marriage and put into the name of one spouse does not prevent the other spouse from obtaining a declaration that the property was acquired by virtue of the joint venture or effort and was therefore being held by the registered spouse in trust for the one seeking the declaration. (**Karanja -v- Karanja [1976] KLR 307**). Indeed, **section 14** of the Act states that: -

“Where matrimonial property is acquired during marriage—

(a) in the name of one spouse, there shall be a rebuttable presumption that the property is held in trust for the other spouse; and

(b) in the names of the spouses jointly, there shall be rebuttable presumption that their beneficial interests in the matrimonial property are equal.”

7. It is on the basis of the provisions and principles that the court will determine this dispute in relation to the properties that the parties did not agree on during the Court Annexed Mediation.

8. The parties lived together as a married couple for 3 years between September 2016 and 8th December 2018. They had begun cohabiting and living together in February 2015. The plaintiff was in salaried employment all the time up to February 2018. The couple incorporated [particulars withheld] Limited through which it traded to secure purchase orders and source for items. Each party was a director and shareholder. It was the evidence of the defendant that he was the one who had solely incorporated the company and produced all the money that was used for trading. He took loans of Kshs.2,800,000/= to set up the company. Secondly, that although the plaintiff was working he was the one who paid all the bills, including hers. She spent all the money on herself, he said. On her part, the plaintiff stated that she was a sales and marketing executive with [particulars withheld] (EA) Ltd, earning between Kshs.150,000/= and Kshs.300,000/= monthly, inclusive of commissions. This was between April 2014 and February 2018. From 1st November 2018 she moved to [particulars withheld] Limited. Her case was that she used her salary and commission to contribute to the purchase of the matrimonial property. She stated that she had a car xxx xxxx which she sold to raise Kshs.500,000/= to put into the acquisition of matrimonial property.

9. Regarding the recliner 7 seater, she stated that she raised most of the money to buy it. She took recliner 3 seater and left behind recliner 4 seater which she claims. The defendant admitted the plaintiff had made the most contribution to the purchase of the recliner 7 seater. He stated that she moved away with it in December 2018. The admission shows that it was not entirely true that the plaintiff made no contribution to the acquisition of matrimonial property. The value put on the recliner 7 seater was Kshs.190,000/=.

10. There is no dispute that the matrimonial house put up at [particulars withheld] in Homabay was on the defendant's ancestral land. The plaintiff's claim was over the built house. She stated that she contributed to its construction. The defendant stated that when the plaintiff left the house was at foundation level. The plaintiff stated that it was at lintel level. The value of the house was put on Kshs.6,500,000/= while complete. The plaintiff stated that the money to build the house came from the company, and that she participated in the construction by sourcing the material and she was the one who had come up with the house plan. The defendant stated that he used his salary, support from parents, dividends and loans to finance the house, and that the plaintiff made no contribution at all.

11. Regarding motor vehicle [particulars withheld], the plaintiff stated that the money to buy it came from the company, except for Kshs.900,000/= which the defendant raised. The defendant stated that he solely bought the vehicle in December 2017 solely. It cost Ksh.1,939,000/=.

12. Regarding motor vehicle [particulars withheld], it was common ground that the plaintiff took a loan from CBA Bank to buy it. The defendant stated that when the plaintiff left employment in January 2018 there was an outstanding loan and he paid a total of Kshs.569,000/= to clear it. It is this vehicle that the plaintiff stated she sold and put Kshs.500,000/= into the family pool to buy matrimonial property.

13. As for [particulars withheld], the defendant stated that he bought it and gifted it to his parents. This happened in April 2019 when the company had stopped trading. This was in answer to the plaintiff's claim that the vehicle was bought using proceedings from the company.

14. The court did not have the benefit of the statement of audited accounts of the company to see how much was put into the business, the source of the money to do the business, how much it made and how it was applied. It was, however, not denied that this was a family company through which it traded for the benefit of the family. Whatever was the case, the plaintiff was a director and a shareholder. Secondly, each spouse had income. Records were not kept of how each spouse spent his/her money, except for the evidence that each tendered.

15. After considering all the evidence on record, I find that the plaintiff's contribution to the construction of the matrimonial home at [particulars withheld] in Homabay was 15%, which is Kshs.975,000/=. The contribution to the 7 recliner seats was 80% which is Kshs.152,000/=. Considering that each seat was about Kshs.27,000/=. the 4 seats that she did not take were worth Kshs.108,000/=. For vehicle xxx xxxx, I estimate that the plaintiff's contribution was 60%. If the value was Kshs.1,800,000/=. her contribution was worth Kshs.1,080,000/=. For xxx xxxx, her contribution was 10%. The value was Kshs.700,000/=. therefore her contribution was Kshs.70,000/=. Her total contribution was Kshs.2,233,000/=. I order judgment for the plaintiff against the defendant in the sum of Kshs.2,233,000/=. The defendant shall pay the money within 90 days from today, failing which it will become payable immediately.

16. Costs shall allow the event.

DATED and DELIVERED at NAIROBI THIS 22ND JULY 2021.

A.O. MUCHELULE

JUDGE