



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

CIVIL SUIT NO. 1 OF 2019 (OS)

IN THE MATTER OF

THE MATRIMONIAL PROPERTY ACT, NO. 49 OF 2013

AND

IN THE MATTER OF

ENFORCEMENT OF RIGHT TO MATRIMONIAL HOME AND PROPERTY

BETWEEN

E.W.G.....APPLICANT

VERSUS

W.M.M.....RESPONDENT

RULING

1. On 30th April 2020 this court allowed the application filed on 4th October 2019 by the applicant E.W.G. to amend her originating summons which she had filed on 16th April 2019 against the respondent W.M.M. seeking declaratory and other orders over matrimonial property that they had alleged jointly acquired while living together as a married couple.

2. The application to amend was based on the grounds that, at the time of the institution of the cause the applicant did not have the full particulars of the property in question, but that now she had sought to cite them; she wished to plead that the marriage between them was based on long cohabitation, and therefore wanted to rely on presumption of marriage; and that since she wanted not just the declaration of her interest in the properties but also the division of the property, she sought to have a prayer dissolving the marriage. She sought, through the amendment, to facilitate a final and effectual determination of all matters in dispute between the parties.

3. The respondent was aggrieved and appealed to the Court of Appeal. In the application dated 22nd June 2020 he sought the stay of these proceedings pending the hearing and determination of the appeal. In the supporting affidavit he indicated the reasons why he thought the court was wrong in allowing the application to amend. The applicant opposed the application, saying, among other things, that the application ought to have been filed in the Court of Appeal.

4. The trial herein has not begun. There is no knowing when the respondent will ultimately file the record of appeal in the Court of Appeal to enable the appeal to be slated for hearing. It is not for this court to estimate the chances that the appeal will have.

5. If the application for stay is not granted, what substantial prejudice or injustice will the respondent suffer? If this court proceeds, hears the parties and renders a decision that will aggrieve the respondent, that will be corrected on appeal. The alternative is that this matter stays indefinitely, at the whims of the respondent, without determination. I do not think that would be the best way to deal with the dispute.

6. In short, I do not find merit in the application and dismiss it with costs.

DATED AND DELIVERED AT NAIROBI THIS 11TH DAY OF NOVEMBER 2021.

A.O. MUCHELULE

JUDGE