



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

MATRIMONIAL CAUSE NO. 71 OF 2009

IN THE MATTER OF AN APPLICATION FOR THE DIVISION OF

MATRIMONIAL PROPERTY (DECEASED)

DAR.....PETITIONER

-VERSUS-

DML.....RESPONDENT

RULING

1. The Application coming for consideration is dated 5.11.2019 filed under Certificate of Urgency seeking the following orders:

(i) THAT service of this Application be dispensed with in the first instance and the application be certified as urgent and heard ex parte.

(ii) THAT a declaration be made properties known as RUIRU EAST BLOCK [...] KAJIADO/KITENGELA/[...] and KAJIADO/KITENGELA/[...] are Matrimonial Properties and that neither party including their agents, servants or any other person claiming any right whatsoever under the can sell, charge or dispose off in whatsoever manner until the hearing and determination of the main suit and/or further orders are issued by this court.

(iii) THAT Respondent do deposit with the Court the Original title of RUIRU EAST BLOCK [...] which is currently under his possession and an injunction be issued restraining the Respondent and his agents from damaging the interior, exterior and fittings of the house until the hearing and determination of the main suit and/or further orders are issued by this Honorable Court.

(iv) THAT each party to bear their costs in this Application.

2. The Application is supported by the Affidavit of the Petitioner of even date in which she has deposed as follows:

(i) THAT she got married to the Respondent on 16.12.2011 at the Marriage Registrar's Office in Nairobi.

(ii) THAT on 24.9.2018 the Respondent evicted her with the Children from the Matrimonial home.

(iii) THAT the Respondent filed Divorce Cause No. 4 of 2019 at Thika Law Courts and the marriage was dissolved and the Decree Nisi was issued which is yet to be made absolute.

(iv) THAT during the subsistence of the marriage, they purchased the Properties in paragraph 1 (ii) above and further that after the Respondent evicted her, he pledged to pay Ksh.53,000 to offset the personal loan which he has not done.

(v) THAT she also took person loans from Safaricom SACCO between 2014 to 2018 for construction of the matrimonial home.

(vi) THAT the Respondent was in contracted employments while she was in gainful employment and she bore the greater financial burden towards family upkeep and for the construction of the Matrimonial home and the purchase of furniture.

(vii) THAT she has approached the Respondent to agree on how to settle her contribution but he is dismissive and non-committal.

3. The Respondent filed a Replying Affidavit dated 18.12.2019 to the said application in which he deposed as follows;

(i) THAT prior to the grant of the Divorce which was made absolute on 6.11.2019, the Petitioner had deserted the Matrimonial home.

(ii) THAT the Petitioner moved out with the title documents of the two properties which they had purchased jointly.

(iii) THAT on 10.9.2012, the Respondent transferred to the Plaintiff Ksh.250,000 to her Barclays Bank A/c No. [...] as part of the purchase price for the purchase properties I.R. KAJIADO/KITENGELA [...] I.R. KAJIADO KITENGELA [...]

(iv) THAT L.R. RUIRU EAST BLOCK [...] does not belong to him but to BARZDAN to his business partnership.

(v) THAT he has given the KITENGELA Properties to the Petitioner.

(vi) THAT the Petitioner did not give him any money from the bonuses or the personal loans and that he came to discover that she is the one giving money to one SAMMY MOCHAMA which they used to buy a taxi.

4. I have considered the Affidavits filed by the Parties and also the written submissions filed herein. I find that the orders sought in the said Application are the same as those which are raised in the Originating summons dated 5.11.2019.

5. The said issues require to be ventilated by evidence and they cannot be determined at interlocutory stage by written submissions.

6. I find that determination of the interlocutory Application dated 5.11.2019 will pre-empt the Originating Summons.

7. I accordingly direct that the Parties file their Witness Statements together with list of documents in the Originating Summons dated 5.11.2019 with 30 days (15 days each beginning with the Petitioner.)

8. This matter will be Mention on 9.3.2020 for the pretrial conference and for a hearing date.

9. In the meantime status quo to be maintained and for avoidance of doubt, no dealings with properties the subject of this suit until the originating summons is heard and determined.

10. The Application dated 5.11.2020 is accordingly dismissed.

11. The Costs of the said Application to abide in the cause.

12. In the meantime, status quo to be maintained with respect to the Properties listed in the originating summons.

13. For avoidance of doubt and for the sake of clarity, no dealings with the following properties until the Originating Summons is heard and determined. The said properties are as follows:

(i) KAJIADO/KITENGELA/ [...]

(ii) KAJIADO/KITENGELA/ [...]

(iii) RUIRU EAST BLOCK [...]

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 7TH

DAY OF FEBRUARY, 2020

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JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.