



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 37 OF 2010

BETWEEN

MNNPETITIONER

AND

JNM.....RESPONDENT

RULING

1. Before court is an application by the Petitioner (wife) dated 5th March 2018 seeking for transfer of ownership of 3 properties namely:

a. Title No. Ngong/Ngong/[...]

b. Title No. [...]Koibarak

c. Plot No. [...] Eldoret (Kapsoya)

2. The application is based on grounds that: the judgment dated 25th November, 2016 directed that the properties be listed; and further, that the Respondent had consented to transfer the same.

3. In an affidavit in support, the Applicant reiterated her grounds and further added that it will save costs, if the issue of the properties was dealt with in this cause. In the same affidavit the Applicant deponed that she contributed to the purchase of **Title No. [...] Koibarak** and solely purchased **Plot No. [...] Eldoret (Kapsoya) farm**.

4. On his part the Respondent filed a replying affidavit and was of the view that the court ought to determine the issue on the matrimonial properties which he stated were obtained through joint effort of the parties. Further he stated that **Title No. [...] Koibarak** is ancestral land and the Applicant did not purchase or contribute towards purchase of the same, as relates to **Plot [...] Eldoret** and **Ngong/Ngong/[...]** the Respondent stated that he is willing to share the same equally as he alleges that the same were acquired with their joint efforts.

5. Though both parties alluded to the existence of matrimonial properties the Judge (Musyoka J) in his judgment made no findings as relates to the said assets and directed the parties move the court appropriately or apply for division of the same in a matrimonial cause for the reason that the pleadings did not specifically identify the said properties.

6. Though the applicant has now specifically described the properties there is a disagreement on how the same were acquired, and no consensus on division of the same between the parties.

7. It is my view therefore, that in the prevailing circumstances, and in the interest of justice it is necessary for the court to receive evidence and have placed before it documents if any to enable the court make appropriate orders. Though it may save costs it will not be possible to ventilate pending issues in this cause as the cause cannot attract two judgments.

8. Parties are therefore directed in the circumstance to move the court for division of matrimonial properties under a separate cause for consideration.

9. No order as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 17th DAY OF JANUARY, 2019.

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ALI-ARONI

JUDGE

In the presence of:

Petitioner.....

Respondent.....