



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAJIADO

MISC. MATRIMONIAL CASE NO. 3 OF 2018

TMW PLAINTIFF

VERSUS

FMC..... DEFENDANT

RULING

This is an application by the husband under Section 3 and 3A of the Civil Procedure Act, Order 51 Rule 1 of the Civil Procedure Orders seeking the following orders:

- 1. That this Honourable court be pleased to order the petitioner to sign the relevant equity bank account forms in order to change the account mandate from “all of us jointly” to “either to sign”**
- 2. That this Honourable court be pleased to order the petitioner to sign the relevant equity bank account transfer forms in order to facilitate the transfer of Kenya Shillings Nine Million Two Hundred and Seventy Four (Kshs.9,274,000/-) from the joint bank account number xxxxxxxxxxxx.**
- 3. That this Honourable Court be pleased to order the Equity Bank Manager, Ongata Rongai Branch to release to the Respondent/applicant the sum of Kenya shillings Nine Million Two Hundred and Seventy-Four (Kshs. 9,274,000/-) held in account number xxxxxxxxxxxx.**
- 4. That this Honourable court be pleased to authorize the Deputy Registrar to sign the relevant equity bank forms should the petitioner refuse to sign in order to facilitate the transfer of Kenya Nine Million Two Hundred and Seventy-Four (Kshs. 9,274,000/-) from the joint bank account number xxxxxxxxxxxx to account number xxxxxxxxxxxx and in order to change the account mandate from “all of us jointly” to “either to sign”.**
- 5. That costs for this application be borne by the petitioner.**

The reliefs sought are anchored on the legality and validity of the judgement delivered on 9th November, 2018. In the matter of a petition for division of matrimonial property. This court held that in so far as the married couples are concerned the provisions of the matrimonial property had to be considered in light of the express provisions of the Act in matrimonial property disputes. The cumulative effect of facts and evidence that emerged on record made this court to draw an inference that the petitioner had not proved a case to categorically apply for the division of the matrimonial property. The more important statement made in the short ruling was in respect of opening the joint account to receive, conserve and use the compulsory acquisition award subject to the terms of their cohabitation as a family. Although I was not dealing with divorce petition or legal separation proceedings between these two couples, there were under tones of some elements of dissertation on lawful separation on the part of the petitioner from the matrimonial home. But it was necessary for me to commence the journey of determining the acts attributable to desertion or separation at that point in time.

What is at stake at the moment is the land compensation award of Kshs.9,274,000/- currently deposited with Equity Bank account number xxxxxxxxxxxx in joint names of the applicant and the respondent.

From the affidavit filed by the applicant there is no dispute that he is legally married to the respondent. The request to this court to divide the award notwithstanding very firm findings in my judgment of 9th November, 2018 is in a way asking me to review the decision without proper procedure being followed by the applicant. The distribution of marital property becomes complicated when couples are recognized as still married and none of them has divorced or legally separated from the union.

I consider the partnership between these two to be still a going concern and any right or obligations could be realized within the pervue of

the provisions of the marriage agreement. What influenced this court to order for a joint account in regard to the deposit of the award was to ensure that one spouse does not expend the asset with the intent of diminishing the others share without his or her knowledge. I saw a likelihood of the applicant entering into a scheme of arrangement designed to deprive the wife of any benefit given their current personal differences which displayed out during the proceedings.

In light of the above the applicant application fails and the following declarations shall abide the finding of this court.

- 1. That the applicant and the respondent are not legally divorced or separated from each other.**
- 2. That the determination of the matrimonial property has to take into account the obligation of the parties, including any liabilities incurred during the subsistence of the marriage.**
- 3. That the court is unable to enter into the realm of distributing matrimonial property between the parties.**
- 4. Having considered the application, the wife has not proved that equal distribution of the marital estate in this case is just and reasonable.**

The upshot is that in absence of divorce or an order of legal separation the court is therefore divested of jurisdiction to maintain an action to divide the property and enter a final decree in favour of the parties.

Dated, signed and delivered in open court at Kajiado this 18th day of February, 2019.

R. NYAKUNDI

JUDGE

Representation: