



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

MATRIMONIAL PROPERTY CAUSE NO 2 OF 2017 (O.S)

MH.....APPLICANT

VERSUS

LL.....RESPONDENT

R U L I N G

1. Although this was supposed to be a judgment, as I set out to write it, it became increasingly clear that I must render a ruling instead for reasons that will appear.
2. The Applicant bought this suit under **sections 7 and 17** of the **Matrimonial Property Act, 2013**, seeking the following main reliefs:
 - (a) **A declaration that the properties known as Plot Numbers [Particulars withheld], all situated within Maralal Township in Samburu County, were all acquired and developed through the Applicant's sole effort, and that therefore the Applicant is entitled to the properties in their entirety.**
 - (b) **A declaration that the Respondent's shares in the said properties are held upon trust for the Applicant.**
 - (c) **An order that the Respondent do execute all documents necessary to transfer the Respondent's interests in the said suit properties to the Applicant, and in default, such documents be executed by the Deputy Registrar of the Court.**
3. In the supporting affidavit the Applicant has deponed as follows in, inter alia -
 - (a) That she met the Respondent in 2011 and they became friends.
 - (b) That subsequently on 14th February 2014 the Applicant and the Respondent entered into a civil marriage under the **Marriage Act**.
 - (c) That in the meantime, on or about 10th November, 2011 the Applicant purchased for valuable consideration Plot No [Particulars withheld], from a third party, and that subsequently, up to January, 2014 she single-handedly developed the same.
 - (d) That after the marriage to the Respondent the Applicant resigned from her job in her mother country Switzerland, and settled in Kenya with her new husband, the Respondent. They commenced living together at Maralal in March 2014.
 - (e) That in May 2014 the Applicant, while living with the Respondent, purchased the other two properties – Plots Numbers [Particulars withheld], Maralal for valuable consideration from a third party.
 - (f) That after a few months of living together, the marriage began having problems, and in June 2014 the Applicant and the Respondent separated.
 - (g) That after the separation, the Applicant discovered that the Respondent was, at the time of his purported marriage to the Applicant, already married to another woman, a fact that he had not disclosed to her.
 - (h) That the Applicant therefore filed suit at Maralal Law Courts against the Respondent for **annulment** of the marriage with the Respondent, and that on 16th August 2016 a **decree absolute for annulment** of the marriage was issued by the court.
4. Though the Applicant did not annex a copy of this decree of annulment of her marriage to the Respondent, the claim is repeated in the written submissions filed on her behalf on 10th July 2018. I will therefore accept the Applicant's pleading that her marriage to the Respondent was annulled. By the same token, she must be bound by her own pleadings.

5. Despite service upon him the Respondent filed no replying affidavit or other response to the originating summons, and all the averments by the Applicant in her supporting affidavit are uncontroverted.

6. That notwithstanding, a legal issue has emerged from the **annulment** of the Applicant's marriage with the Respondent. It must be understood that a **decree of annulment** is not the same thing as a **decree of divorce**.

7. A decree of divorce is dissolution of a lawful marriage by a court of law. A decree of annulment on the other hand is a declaration by a court of law that the purported marriage never existed from the very beginning, that there never was a lawful marriage in the first place!

8. The **Tenth Edition** of **Black's Law Dictionary** explains it as follows at page 110-

“annulment

1. The act of nullifying or making void.

2. A judicial or ecclesiastical declaration that a marriage is void.

An annulment establishes that the marital status never existed. So, annulment and dissolution of marriage (or divorce) are fundamentally different: an annulment renders a marriage void from the beginning, while dissolution of marriage terminates the marriage as of the date of the judgment of dissolution....”

9. The long and short of this is that the Applicant was never lawfully married to the Respondent. No legal marriage ever existed between them despite the civil ceremony under the **Marriage Act**.

10. That being the case, the next legal issue that arises is whether the Applicant could properly bring the present proceedings under the **Matrimonial Property Act, 2013**.

11. **Section 17** of that Act provides for actions for declaration of rights to matrimonial property. Subsection (1) thereof states:-

“A person may apply to a court for a declaration of rights to any property that is contested between that person and a spouse or former spouse of the person.”

“Spouse” is defined in **section 2** of the Act as **“a husband or a wife”**.

12. The Respondent and the Applicant were never husband and wife. Their purported civil marriage was annulled by a decree of a court of law. That is what the Applicant herself has pleaded.

13. In these circumstances, the Applicant's claims in respect to the three properties lie in other civil proceedings before another court with the requisite jurisdiction, not before this court in proceedings under the **Matrimonial Property Act, 2013**. That is the finding of this court.

14. In the circumstance, the proper and just thing to do is to strike out this suit to enable the Applicant to pursue her claims in another court in appropriate proceedings. It is so ordered.

15. There will be no order as to costs of these proceedings.

DATED AND SIGNED AT NANYUKI THIS 7th DAY OF MARCH 2019

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 7TH DAY OF MARCH 2019