



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 58 OF 2017

IN THE MATTER OF DIVISION OF MATRIMONIAL PROPERTY

AND

IN THE MATTER OF MATRIMONIAL PROPERTY ACT,2013

BETWEEN

JNM.....APPLICANT

VERSUS

TKK.....RESPONDENT

RULING

1. Following an application dated 11th September 2017, by the applicant seeking for preservation of matrimonial properties herein and sharing of rental proceeds, the parties entered into a consent order as follows; -

- i. That the Applicant do manage and receive rent proceeds in respect of Kajiado/ Kaputei-North/[...] with effect from 1st February 2018.**
- ii. That the Respondent do continue managing and receiving rent proceeds from other three (3) properties namely; -**
 - a. Kajiado/Kaputei-North [...]**
 - b. Kajiado/Kitengela/[...]**
 - c. Kajiado/Kaputei-North/[...]**
- iii. That the Applicant to Continue staying at Greenspan House together with the issues of the marriage.**
- iv. That the applicant to cater for her food and that of the issues of the marriage while the Respondent shall continue paying for school fees, school related expenses, clothing and other needs of the children.**
- v. That none of the properties shall be transferred or disposed off by any of the parties and/or their agents.**
- vi. That these orders do determine the application dated 16/01/2018 in Divorce cause No. 645/17 before the Chief Magistrates Court.**
- vii. That the parties are at liberty to apply or negotiate further.**

2. The application dated 26th October 2018 subject of this ruling seeks to upset the consent order. In the said application, the applicant seeks to review the consent order by having more properties allocated to her namely; -

- a. Kajiado/Kaputei-North [...]**
- b. Kajiado/Kaputei-North/[...]**

- c. Kajiado/Kaputei- North/[...]
- d. Huruma [...]
- e. Kajiado/Kaputei-North/[...]
- f. Kajiado/Kaputei-North/[...]
- g. Kabarak (Chagei) 2acres

3. The application is premised on grounds that the consent order allocated properties and responsibilities yet the respondent has failed to comply leaving the applicant with a larger share of the family's responsibilities.
4. The respondent denied the allegations asserting that he has met all the obligations assigned to him in the consent order and has also reduced family liabilities.
5. Though the matter before court is on division of matrimonial properties in an attempt to compromise the interlocutory application then before this court and the children's court the consent was entered into. The same was not limited to preserving the properties but also captured the needs of the issues of marriage, as income from the said properties caters for the family needs.
6. The principles necessary in reviewing or upsetting consent orders are well settled. Secondly it must be noted that the consent order did not distribute matrimonial property but sought to allocate income from the assets pending final determination of the matter.
7. The parties have several properties in dispute and some are income generating. Equally both claim to be meeting obligations some of which arise from the consent. There is also an allegation of non-compliance with the consent.
8. In order for the court to arrive at an informed decision it must be given full details of the assets, income from the same and details of obligations to be met by each. Documents and proof of the same need to be brought to the court's direction. The information currently on record is scanty. Noting that the issue of upkeep and maintenance of the children featured in the consent and informed distribution of income from the assets, and responsibilities assigned to each party. It is therefore in the interest of justice that I direct the parties to file the necessary details within the next 14 days from the date hereof to enable the court make a determination on the application.

SIGNED DATED and DELIVERED in court this **9TH** day of Day of **MAY, 2019**.

.....

ALI-ARONI

JUDGE

In the presence of:

Counsel for the Applicant.....