



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

MATRIMONIAL CAUSE NO. 1 OF 2019

JOO.....APPLICANT

VERSUS

JNO..... RESPONDENT

RULING

1. The applicant and the respondent in this matrimonial cause are husband and wife. Apparently their relationship has grown cold. The applicant has moved this court for intervention so that he can sell part of their land to enable him meet medical costs. This he did by way of Notice of Motion under sections 1A, 1B and 3A of the civil Procedure Act and Order 40 Rules 1 and 4 of the Civil Procedure Rules. He is seeking orders as follows:

- a. That the caution in respect of land parcel number **NGONG/NGONG/XXXXX**.
- b. That the applicant be at liberty to hive off the equivalent of 0.15 ha. From land title number **NGONG/NGONG/XXXXX**.

2. The application was premised on the following grounds:

- a. That the applicant is the registered owner of land title number **NGONG/NGONG/XXXXX** having purchased it for valuable consideration.
- b. That the applicant suffers from four chronic medical conditions and urgently requires two urgent surgeries.
- c. That the respondent placed caution in the year 2015 and has refused to remove it.
- d. That the respondent has no other source of income to cater for his medication.

3. The respondent opposed the application on the following grounds:

- a. That the intended sale of land parcel number **NGONG/NGONG/XXXXX** would render their children and grandchildren landless.
- b. That there are other alternative means the family may exercise to meet the applicant's expenses.
- c. That it would be premature for the court to ask the parties to share the matrimonial property before the divorce case is determined.

4. There are several undisputed facts that both parties admit though not expressly. These are:

- a. That the both are still husband and wife.
- b. That the applicant is no longer in any gainful employment.
- c. That he is in need of medical attention which requires a colossal amount of money.

5. Common logic would dictate that when an individual is faced with financial challenges he/she must resort to raise the same by disposing some assets earlier acquired. This is the same situation the applicant has found himself in. I have looked at the attached medical documents

and I am satisfied that indeed his application is not driven by selfishness as the respondent contends. He is a man in need of medical attention.

6. Though the respondent has averred that the family can raise the required medical expenses she has not offered any for the consideration of the court.

7. The contention that hiving part of the land parcel number **NGONG/NGONG/XXXXX** would render their children and grandchildren landless is not supported by the evidence on record. The applicant proposes only to hive off the equivalent of 0.15 ha. The couple has other lands. None of their children is a minor. The applicant cannot be condemned to suffer so that his children and grandchildren can inherit.

8. I therefore find that the application is merited. It does not amount to sharing out the matrimonial property. This is the only logical way to ensure that a person does not suffer when he has property which he acquired when he was healthy and strong.

9. It is ordered that the land registrar Kajiado North to remove the caution that was lodged in respect of land parcel number **NGONG/NGONG/XXXXX** and the applicant be at liberty to hive off the equivalent of 0.15 ha and sell for the purposes of his medication.

10. Each party will meet own costs.

DELIVERED and SIGNED at BUSIA this 12th day of June, 2019

KIARIE WAWERU KIARIE

JUDGE