



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

HIGH COURT CIVIL SUIT NO.30 OF 2018

CAROLINE WAITHIRA NDUNGU.....PLAINTIFF

VERSUS

SIMON NDWIGA KIBUCHI.....DEFENDANT

STANBIC BANK KENYA (FORMERLY CFC STANBIC

BANK LTD.....INTERESTED PARTY

RULING

1. The Parties in this Case entered a Consent on 3.6.2019 which settled the Plaintiff's Originating Summons dated 11.5.2018 on the following terms;

a. THAT the Defendant consents to the declaration of the Suit Property L.R. No. 2327/31 DikDik Lane off Lamwia Road, Karen in Nairobi County (hereinafter referred to as "the suit property" as Matrimonial Property.

b. THAT upon receipt of an acceptable Professional undertaking from the Plaintiff's Financiers Advocates or by the Plaintiff's Financiers to the Interested Party to pay to the Interested Party the sum of Ksh.40,000,000/- (or such other amount net of the mandatory Deposit payable on execution of the Agreement for Sale as per Clause 1 (c)) in and final settlement of the negotiated loan amount owed by the Defendant to the Interested Party and such other undertakings as may be required in respect of handling of the Title Document and Discharge of Charge by the Plaintiff's Advocates, the Suit Property shall be transferred by way of a sale by private treaty by the Defendant to the Plaintiff with the consent of the Interested party.

c. THAT the Defendant shall execute an Agreement for Sale and Transfer in favour of the Plaintiff and such other documents required to effect the transfer of the Suit Property to the Plaintiff.

d. THAT the Defendant shall, on registration of the transfer of the Suit property in favour of the Plaintiff, be declared to have beneficial interested party.

e. THAT the Plaintiff and the Defendant shall be entitled to equal shares in the ownership rights as well as liabilities of the Suit Property.

f. THAT the Plaintiff and the Defendant shall be equally liable for repayments of the loan advanced by Barclays Bank of Kenya (the Plaintiff's financiers) to the Plaintiff to settle the Defendant's indebtedness as stated in 1(b) above on such terms to be agreed between themselves and whereupon the Defendant shall remit the agree monthly repayments on the 7th working day of every month to the account designated by the Plaintiff.

g. THAT in the event of default of repayments (f) above for a period of seven (7) continuous months, the defaulting party shall forfeit their rights over the property.

h. THAT in default of compliance with condition 1(b) above the Interested Party shall with notice to the Plaintiff and Defendant be at liberty to proceed with exercise of its statutory power of sale to recover the loan outstanding as per the interested Party's books of account

i. THAT the costs of the suit shall be determined by the Court through submissions by the parties.

2. The Parties filed submissions on the issue of Costs which I have considered.
3. The Subject of Litigation is Matrimonial Property LR No. 2327/31 DikDik Lane off Lamwia Road, Karen in Nairobi County (hereinafter referred to as "the suit property) which the parties agreed declared a Matrimonial Property.
4. The Parties compromised the Suit by entering into the written consent dated 3.6.2019 recorded in Court on 6.6.2019. It is the duty of this Court to promote reconciliation between parties.
5. This case is a good indicator that ADR is the best way to resolve suits in the family division.
6. **Article 159 (2)** is very clear that in exercising Judicial authority, the Courts and tribunals shall be guided by the principle that alternative forms of dispute resolution including reconciliation, mediation, arbitration and even traditional dispute resolution mechanisms shall be promoted.
7. In the case of **Kenya Pipeline Company Limited v Kenolkobil Limited [2013] eKLR** where Justice J. Kamau stated as follows:

“I must point out that a plain reading of Article 159 of the Constitution of Kenya, 2010 requires the court to promote settlement of disputes by way of alternative dispute resolution. That may be so but such referral must be by the consent of the parties because of the very nature of the resolution methods. It is for that reason that the Constitution uses the words “promote” and not “shall refer to” alternative dispute resolution.

8. It would not be in the interest of justice or in line with the spirit of Article 159 (2) (c) to penalize any party with costs in view of the amicable settlement reached by the Parties.
9. The award of costs is a matter the trial Court is given discretion which has to be exercised upon reasonable grounds and further, the costs should follow the event or they should be awarded to the successful party. I find that in this amicable settlement, all parties are successful.
10. Having considered the submissions filed by the parties, I find that this suit has been settled save for the issue of Costs.
11. The Interested party is seeking to be paid by both the Plaintiff and the defendant as they are the ones who dragged the interested party into this suit.
12. However, I find that this suit was amicably settled and there is no loser or winner. The Interested party also stands to gain from the settlement.
13. I find that there is good reason to have each party bear its own costs as each party stands to gain from the settlement.
15. The settlement has saved a lot of time which would have been spent in litigation and it is in the interest of Justice and reconciliation be promoted as a method of solving disputes in line with Article 159 (2) (c) of the Constitution of Kenya 2010.
15. I accordingly direct that each party bears its own costs of this suit.
16. Finally I commend all the Parties and their Advocates for their conduct.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 5TH DAY OF JULY, 2019

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.