



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 51 OF 2017 (OS)

KK.....APPLICANT

VERSUS

SMM.....RESPONDENT

STANDARD CHARTERED BANK LIMITED.....INTERESTED PARTY

RULING

1. The Applicant herein KK moved the court against the Respondent SMM by way of an originating summons dated 27th January 2018.
2. The application was brought inter alia under the provisions of **Sections 6, 7 & 17 of the Matrimonial Property Act (the Act)**. It seeks for the following orders:
 - i) **A declaration that the properties (movable and immovable) listed therein with all buildings thereon acquired and developed by the joint funds and efforts of the Applicant and Respondent during their marriage and registered in the name of the Respondent and/or in the name of companies are jointly owned by the Applicant and Respondent.**
 - ii) **A declaration that the properties listed as above constitute Matrimonial property jointly owned by the Applicant and Respondent and should only be dealt with appropriated, charged for finance or otherwise disposed of in a manner acceptable to and compatible with the rights of the Applicant and the children of the marriage.**
 - iii) **A declaration that an order should be issued declaring that Fifty (50%) per cent or such other or higher proportion of the properties aforesaid, is held by the Respondent in trust and for the beneficial interest of the Applicant and children of the marriage.**
 - iv) **A declaration that the properties should be equally and/or sold and the net proceeds be shared equally between the Applicant and the Respondent or in such manner as the court may deem just.**
 - v) **That the court grants a temporary injunction order restraining the Respondent by himself, his agents, servants or workmen from doing any of the following acts that is to say, demolishing, removing, bringing down, wasting, damaging or in any other manner whatsoever destroying any of the houses, buildings, fences and/or structures erected on any of the properties owned jointly by the Applicant and the Respondent, being the subject matters of the originating summons herein pending the hearing and determination of this suit.**
 - vi) **That this honourable court do order that the Respondent do provide and disclose a comprehensive list of all properties, shares and bank accounts he holds and owns both locally and outside the jurisdiction of this court and that upon the said disclosure of the properties, accounts and share, such be shared equally between the Applicant and the Respondent.**
 - vii) **That the Respondent be compelled to produce all title documents to the listed properties in court.**
3. The said application is based on grounds that the parties are a husband and wife since 1992 and they acquired properties during the subsistence of the said marriage which properties the Respondent holds in trust for the Applicant and children of the union.
4. There is no dispute that there is existing and yet to be determined a divorce cause between the parties to wit Divorce cause No. 140 of 2017.
5. Together with the originating summons was filed a Notice of Motion Seeking to enjoin the interested party, a financial institution and for various injunctive orders against the said Interested Party touching on property **L.R. No. [xxxx]**.

6. The originating summons and the application have been opposed by the Respondent and the Interested Party. It is noteworthy that the Respondent is the one who sought for financial services from the Interested Party.

7. On its part the Interested Party filed a Preliminary Objection dated 9th May 2019 on grounds that the originating summons as filed is incompetent, fatally defective and inconsistent as the same seeks to distribute matrimonial property before dissolution of marriage between the Applicant and the Respondent. The Respondent supports the Preliminary Objection.

8. I have considered the arguments in support of the preliminary objection and the counter arguments. There is consensus between the parties that Divorce cause No. 140 of 2017 is yet to be determined.

9. There is no doubt that the originating summons seeks declaration by the court of the applicant's interest as it seeks to have the property sold and proceeds of the matrimonial property shared.

10. **Section 6 of the Matrimonial Property Act** defines Matrimonial property to include matrimonial home or homes and any immovable and movable property jointly acquired during the subsistence of marriage.

Section 7 of the Act guides the court on how matrimonial property would be shared and only at divorce or at the dissolution of marriage.

11. **Section 17** of the Act on the other hand provides that any person may apply to court for a declaration of rights to any matrimonial property in contention.

12. Having quoted the above sections law and the relevant facts of the case, it is not lost to this court that **Section 7** bars distribution of matrimonial assets before dissolution of marriage or divorce. However read together with section 17 the court has been empowered to declare rights before a matrimonial cause (read a divorce cause) has been filed or determined and to preserve the same.

13. Consequently therefore I am of the view that since the originating summons has several prayers seeking declaration of rights the same cannot fail in its entirety.

14. The Preliminary Objection is therefore dismissed with costs to the Applicant.

SIGNED DATED and DELIVERED in open court this **19TH** day of **SEPTEMBER, 2019**.

.....

ALI-ARONI

JUDGE