



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 30 OF 2015 (OS)

IN THE MATTER OF DIVISION OF MATRIMONIAL PROPERTY

BETWEEN

E M K.....APPLICANT

AND

J K Z.....RESPONDENT

RULING

1. The Applicant **E M K** moved the court by way of an originating summons against the Respondent **J K Z** under **Sections 14(b) of the Matrimonial Property Act (2013)**.
2. The suit was heard and determined. The court pronounced itself by dismissing the same as it found that;
 - **There was no evidence before court on the status of the marriage between the parties and how the jurisdiction of the court was invoked.**
 - **Evidence before court was insufficient and incomplete to enable the court make a decision.**
 - **Oral evidence accompanied by cross examination is necessary in such a case so is documentary evidence.**
 - **Lastly it will be ill advised to decide Matrimonial Property piece meal.**
3. The current application is made against the above back ground and seeks 2 substantial prayers;
 - i) **For the Applicant to be allowed to adduce further evidence in support of her case after delivery of judgment.**
 - ii) **A declaration that there exists a presumption of marriage between the Applicant and the Respondent by virtue of the long cohabitation.**
4. The application is predicated on grounds that; the court dismissed the suit on the basis that there was no evidence as to the status of the marriage and/or insufficient evidence before it; that both in her pleadings and testimony, the Applicant deponed to long cohabitation as husband and wife form 1989 to 2003 with the Respondent though she had not formalised the marriage nor obtained a divorce decree; that the court failed to presume marriage despite the evidence of long cohabitation; that the property subject matter was registered in joint names, the Respondent did not contest the marriage, nor did he appear in court to challenge the Applicant's evidence.
5. In the supporting affidavit the Applicant buttressed her grounds and in addition deposed that out of the long cohabitation the union sired two children; their families regarded them as a couple, she purchased L.R. No. 10901/[particulars withheld] solely but included the Respondent's name since they were a couple, and had contributed towards development of the property.
6. In her submissions Mrs. Kalsi for the Applicant urged the court to allow further evidence post judgment and to consider the annexures forming part of the application.
7. The Respondent apart from filing a response to the originating summons did not participate in the case. Likewise he was served with the current application did not file a response.

8. The issues for my consideration are; Whether this court can re-open the suit and admit new evidence in an attempt to review its decision; Secondly whether re-opening the case with the “new evidence” would serve any purpose?

9. In my considered view, the Applicant has completely failed to appreciate that this court (Farah Amin J) did not grant orders sought as the court was not informed of the status of the marriage; meaning the court was not told if the parties were divorced or whether the marriage stands dissolved? Since the above was not clear was unable to invoke its jurisdiction.

10. From the evidence on record it appears that the parties cohabited as husband and wife for 14 years. This not disputed. The Applicant now wants the court to make that presumption. Even if the court does so for distribution to succeed, the marriage would have to be dissolved first.

11. **Section 7 of the Matrimonial Property Act** stipulates that matrimonial property shall be divided if the spouses are divorced or their marriage is otherwise dissolved.

12. For as long as the marriage has not been dissolved the court cannot interfere with matrimonial property. The suit is certainly premature even on the face of “the new evidence” unless the marriage is dissolved.

13. In **N.C.K. Vs G.V.K. HCCC No. 66 of 2012 (OS)** the court had this to say in a similar matter:

“..... the court does not have jurisdiction under Section 7 of the Matrimonial Property Act 2013 to divide the matrimonial property between the applicant and the respondent during unbroken coverture.”

14. Put simply for as long as the parties are not divorced or their marriage dissolved, the Act does not permit division of matrimonial property.

15. For the above reasons the application is dismissed.

SIGNED DATED and DELIVERED in open court this **11th** day of **OCTOBER, 2018**.

.....

ALI-ARONI

JUDGE