



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 6 OF 2010 (OS)

LWM.....PLAINTIFF

VERSUS

JNK.....DEFENDANT

JUDGMENT

1. The Originating Summons herein is dated 2nd February 2010 and was filed at this registry on even date, and seeks:-

- (a) A declaration that LR No. [.....] Senior Staff Estate Athi River registered in the name of the defendant is held for the benefit of the plaintiff and the defendant, and that it be ordered that the same is owned jointly in equal shares by the plaintiff and the defendant;
- (b) That the same property be sold and the proceeds of sale be apportioned equally between the plaintiff and the defendant;
- (c) A declaration that all those shares in [Particulars Withheld] Pharmacy Limited are jointly owned by the plaintiff and the defendant in equal shares and that they are held by the defendant in trust for the plaintiff;
- (d) A declaration that the plaintiff is entitled to 50% of the said shares;
- (e) A declaration that the motor vehicles listed in the suit registered in the name of [Particulars Withheld] Pharmacy Limited are the property of the defendant and are held by the respondent in trust for the plaintiff;
- (f) An order that the said motor vehicles be sold and the proceeds shared equally between the plaintiff and the defendant;
- (g) A declaration that the money held by [Particulars Withheld] Pharmacy Limited in an account with the Standard Chartered Bank is held in trust for the parties hereto;
- (h) A declaration that the plaintiff is entitled to 50% of the said money;
- (i) an order that all or any of the assets acquired during the pendency of the marriage between the parties which have been transferred into the names of the defendant's agents, servants and/or anyone claiming through the defendant are held in trust and for the benefit of the plaintiff and the defendant; and
- (j) Costs of the suit.

2. The facts upon which the suit is founded are set out in the affidavit sworn on 2nd February 2010 by the plaintiff. She deposes that the defendant is her husband, having married him in 1997 under customary law. She avers that the marriage has irretrievably broken down. She avers that the property set out in paragraph 1 here above was acquired during coverture. She asserts that she contributed both directly and indirectly to the acquisition of the said assets. She has attached copies of various documents of title as evidence that the assets in question exist and were registered in the names of either the defendant or the company.

3. The defendant swore an affidavit on 4th March 2010 and filed it herein on 5th March 2010, in response to the suit. He concedes to the marriage and the turbulence within it. He avers that the plaintiff did not contribute to the acquisition of the assets listed in the suit. He avers that the account with the Standard Chartered Bank was a business account of the company, and any orders made thereon would paralyze the company. He further states that the company was technically insolvent. He says that the value of the assets of the company should not be considered outside of the fact that it was insolvent. He explains that the plaintiff became a director of the company in 1996 to replace a director who was leaving the country. He has attached several documents to his affidavit to support his contentions.

4. The plaintiff swore a supplementary affidavit on 18th May 2010, filed herein on even date. The principal purpose of the said affidavit is to place on record facts to the effect that securities held in a Central Bank of Kenya CDS account in the name of the defendant had been rediscounted or redeemed in violation of a court order made on 11th March 2010 preserving the assets the subject of the suit.

5. Directions were given on 3rd May 2012 for disposal of the matter by way of affidavit and oral evidence, and for filing of witness statements and bundles of documents. The plaintiff complied with direction to file statements and documents by lodging hers herein on 26th June 2012. I have scrupulously perused through the record herein and I have not encountered any witness statement by the defendant and his proposed witnesses, nor of any bundles of documents.

6. The oral hearing happened on 7th December 2017 with the plaintiff on the witness box. The defendant did not attend court and therefore he did not testify. His advocate had obtained the hearing date, and sought adjournment on grounds that they had been recently served and had contacted him. The adjournment application was rejected and the matter proceeded. The plaintiff gave vent to the averments made in her Originating Summons dated 2nd February 2010 and produced documents to support her case. She was not cross-examined and as the defendant did not adduce evidence to contradict her testimony her case was not controverted.

7. I shall, therefore, hold that the plaintiff has established her case as stated in the Originating Summons. I shall accordingly grant orders in terms of all the prayers set out in the Originating Summons herein dated 2nd February 2010, and summarized in paragraph 1 of this judgement. The plaintiff shall have costs of the suit. Any party aggrieved by the orders made herein has twenty-eight (28) days to challenge the same at the Court of Appeal.

DATED, SIGNED and DELIVERED at NAIROBI this 5TH DAY OF OCTOBER, 2018.

W. MUSYOKA

JUDGE