



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

CIVIL CASE NO 10 OF 2008

(FORMERLY CIVIL CASE NO. 350 OF 2008 (OS))

A.C.I.....PLAINTIFF

VERSUS

J.A.O.....DEFENDANT

RULING

1. The plaintiff A.C.I. and the defendant J.A.O. met in 1998 in Kenya and begun cohabiting. In the process, they got two children: A.O.E., born on 20th December 2001, and J.A.F., born on 2nd June 2003. On 13th July 2004 the relationship was formalised by the celebration of a marriage under the **Marriage Act (Cap.150)**. The plaintiff petitioned the court in **HC Divorce Cause No. 65 of 2008** to divorce the defendant. The matter is still pending.

2. On 23rd July 2008 the plaintiff filed summons (Under the former **Order XXXVI rule 1(c), (d), (f) and (g) of the Civil Procedure Rules and section 17** of the now repealed **Married Women's Property Act, 1882**) for a declaration that the listed properties were jointly acquired matrimonial property which were held by the defendant in trust for them in the ratio of $\frac{1}{4}$ for her and $\frac{3}{4}$ for him. He asked that the property be sold and the proceeds be shared in that ratio. He further claimed that the couple had jointly acquired motor vehicles BMW 3 series KAT [...], Mercedes Benz convertible E 200CLK KAR [...], Toyota RAV4 KAP [...], Toyota Harrier KAS [...] and unregistered Grey Hammer H 3 by contribution in the same ratio. An order was sought that the vehicles be sold and the proceeds shared in that manner between the parties. Regarding the land properties and also from the business in [particulars withheld] on LR No. [...], he asked that the defendant be ordered to render correct and proper accounts of the income and interest of the same.

3. The defendant filed a replying affidavit in which she denied the claims by the defendant. She swore that the three land properties were solely purchased by her before the two got married, and therefore, that they were not matrimonial property. Regarding the vehicles, her case was that none of them was in her name. She stated that the vehicles were in the names of third parties, and were not therefore matrimonial property.

4. In its judgment dated 18th December 2017 and delivered on 21st December 2017 the court held that the following properties were acquired when the plaintiff and the defendant were living together and married, and therefore constituted matrimonial property:

- a) LR No. [...] comprising commercial and residential houses;
- b) LR No. [...] Chalbi Road, Lavington on which seven town houses were built (each worth Kshs.14,000,000/=) which were sold;
- c) LR No. [...] on which eight (8) townhouses were being built each valued at Ksh.17,000,000/=;
- d) a forty bedroomed hotel called [particulars withheld] that was developed on LR No. [...]; and
- e) vehicles which were acquired during the marriage, although they were not registered in the names of either party.

5. The court determined and declared that the plaintiff's claim to the property was 70% and the defendant's was 30%. It ordered the defendant to provide, within 90 days from the date of the judgment, the accurate account, inventory and status of the matrimonial property named in the originating summons. The case was to be mentioned thereafter for further orders.

6. On 4th October 2018 the defendant filed an inventory of the assets dated 1st October 2018. I direct that this inventory be served on the plaintiff who shall within 60 days of service file and serve an affidavit in response. The matter shall be mentioned on 7th February 2019 for further directions.

7. By the time of the mention, the parties will indicate the status of their divorce proceedings.

DATED and DELIVERED at NAIROBI this 15th day of NOVEMBER 2018.

A.O. MUCHELULE

JUDGE