



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HIGH COURT CIVIL CASE NO 27 OF 2004 (O.S.)

IN THE MATTER OF AN APPLICATION UNDER THE MARRIED WOMEN'S PROPERTY ACT 1882

G M.....PLAINTIFF

VERSUS

T K T.....DEFENDANT

RULING

1. The Application that has come for consideration before me is the one dated 24th August 2018 seeking the following orders:

(a)

- i. THAT the entire Proceedings herein be struck out with costs for want of Prosecution.
- ii. THAT in the alternative the entire proceedings herein be struck out with costs for being a gross abuse of the due process.
- iii. THAT the interim orders obtained herein be unconditionally discharged forthwith and set aside.
- iv. THAT the Costs of this application be provided for.

2. The Application is based on the following grounds:

(b)

- i. On 12th September, 1992 the Plaintiff and the Defendant got married at Our Lady Queen of Peace Church, South B Nairobi within the Republic of Kenya.
- ii. Whilst our said marriage is still subsisting, the Plaintiff commenced these proceedings with an ulterior motive and some malicious intention of depriving the Defendant of his properties.
- iii. The Plaintiff has not taken any steps whatsoever to prosecute this suit for a period exceeding fourteen (14) years and there is no desire or interest expressed or otherwise shown in either proceeding with or prosecuting these proceedings
- iv. The parties have never been divorced and such proceedings ought not to have been commenced and/or sustained unless and/or until an appropriate Divorce Court pronounces a Decree Absolute.
- v. The Married Women Property Act ceased to extend to or apply in Kenya on 31st December, 2013 upon the enactment of the Matrimonial Property Act and the Plaintiff has taken no steps whatsoever to bring her claim (if any) within the provisions of the law applicable.
- vi. The Plaintiff has enjoyed draconian injunctive orders obtained in this matter for a period of 14 years.
- vii. It is in the interest of justice that the orders sought be granted to avert gross miscarriage of justice.

3. The Application is supported by the Affidavit of the Applicant, T K T in which he has deposed as follows:

- i. THAT on 12th September, 1992 the Plaintiff, G M K and I got married at Our Lady Queen of Peace Church, South B Nairobi within the Republic of Kenya.
- ii. THAT whilst the said marriage is still subsisting, the Plaintiff commenced these proceedings with a clear intention of depriving me of my properties and/or unjustly enrich herself.
- iii. THAT the Plaintiff has without just cause sustained the said proceedings and the interim orders issued restricting some of my personal properties.
- iv. THAT I am advised by Counsel on record for me that the orders issued in favour of the Plaintiff have been extinguished by effluxion of time and pray that the same be formally discharged forthwith.
- v. THAT the proceedings herein have been a serious obstacle and hindrance barring me from transacting freely with my personal properties which had been acquired by myself prior to marriage to the Plaintiff and other properties acquired by me through a bank mortgage without any contribution whatsoever by the Plaintiff.
- vi. THAT I am advised by Counsel on record for me and verily believe this to be true that the Married Women Property Act ceased to extend to or apply in Kenya on 31st December, 2013 upon the enactment of Matrimonial Property Act and the Plaintiff has taken no steps to bring this suit within the provisions of the law applicable currently.
- vii. THAT the Plaintiff has not prosecuted this suit for a period exceeding fourteen years and there is no desire or interest expressed or otherwise shown in either prosecuting or otherwise terminating the proceedings.
- viii. THAT we have never been divorced and Counsel on record for me advises me which advice I verily believe to be true that such proceedings under the Married Women's Properties Act ought to have been commenced or sustained until an appropriate Divorce Court pronounces a Decree Absolute.
- ix. THAT by mutual consensus the parties have by consent withdrawn and/or terminated the divorce proceedings which the Plaintiff had filed against me being **High Court Divorce Cause No. 95 of 2004 (O.S.) G M K Vs – T K T**
- x. THAT the Plaintiff has been evasive and avoiding service of a fresh Divorce Petition filed by me in the Chief Magistrate's Court CMCC Divorce Cause No. 516 of 2018 T K T Vs. G M K as evidenced by a letter addressed to her by my lawyers herein after confirmation of evasiveness by a duly licensed Court Process Server. ***(Copies attached and marked as TKT – 4)***
- xi. THAT despite being notified in writing it is evident that the said Plaintiff is indecisive and intends to unduly prolong the existence of unfounded proceedings against me based upon a law which is no longer operational in Kenya and a suit whose basis is completely illegal and against the law. ***(Copies of correspondence attached and marked as TKT -5)***
- xii. THAT no steps have been taken to prosecute these proceedings for a period exceeding 14 years. The proceedings have hanging over my heads for an inordinately and completely inexcusable long period of time.
- xiii. THAT the interim orders obtained against LR. No. 3734/244, LR. No. 209/7070 and House No. 122 Mugoya Estate ought to be discharged forthwith as it is extremely prejudicial to have orders subsist beyond the one year prescribed by the law.
- xiv. THAT I pray for orders for dismissal of the proceedings with costs (i) for want of prosecution and (ii) for seeking wrongfully some pre-emptive determination of Matrimonial Properties issues before a divorce decree has been issued by any competent Court of Law.

4. The Application was not opposed as the Respondent was served in person after her Counsel was granted leave to cease acting for her and she failed to come to Court or file any response to the said application.

5. The Applicant relied on the cases of P N N VS S W N [2000] eKLR where the Court held as follows:

“ The Court of Appeal in P N VS S NAIROBI CA NO. 2 OF 2000 that the High Court has no jurisdiction under Section 17 of the Married Women Property Act 1882 to alienate lands between spouses during their lifetime or unbroken coverture, and that a judge faced with a suit where division of matrimonial property is sought in such a case ought to dismiss it”

6. I find that the Respondent apart from seeking declaratory and restraining orders from dealing with matrimonial property, is also seeking that her portion in the said immovable property be transferred to her.

7. I allow the Application dated 24th August 2018 as prayed.

8. I find that the Originating summons dated 22.9.2004 is accordingly dismissed. The Interim Orders granted are also discharged.

9. On the issue of Costs, I order that each party bears its own costs of the dismissed suit.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 2ND DAY OF NOVEMBER 2018

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI

IN THE PRESENCE OF:

Byaruharge holding brief for Mr. Gatheru for the defendant/Applicant