



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY DIVISION**

**CIVIL SUIT NO. 20 OF 2011**

**D E N.....PETITIONER**

**VERSUS**

**P N N.....RESPONDENT**

**RULING**

1. I delivered a ruling herein on 8<sup>th</sup> September 2016, wherein I gave directions on the implementation of a Court of Appeal decision rendered on 9<sup>th</sup> March 2015.

2. The respondent has come to court by a Motion dated 14<sup>th</sup> November 2016 seeking review, setting aside or variation of the said orders. The grounds upon which the review is sought are set out on the face of the application, as well as in the affidavit sworn by the respondent on 14<sup>th</sup> November 2016. The principal grounds appear to be that the decision by the Court of Appeal had not ordered sale of the subject property, and in any event the petitioner had not demanded from the respondent the difference in value between Nyandarua/Oljoro Orok Salient/[particulars withheld] and Nairobi Block 32/[particulars withheld] High View Estate Phase II House No. [particulars withheld].

3. The Motion is opposed. The petitioner filed a notice of preliminary objection and grounds of opposition, dated 16<sup>th</sup> November 2016. He has advanced a number of grounds, principally saying that the respondent failed to take advantage of the 120 days given to her by this court to enable her seek review at the Court of Appeal of the orders granted by that court on 9<sup>th</sup> March 2015.

4. The application was urged before me orally on 17<sup>th</sup> November 2016. Counsel appearing addressed me at length on the various orders made in the matter, and expounded on the grounds that they have set out on their respective court papers.

5. This court had on 19<sup>th</sup> July 2012 delivered a judgment wherein Nairobi Block 32/[particulars withheld] was awarded to the respondent, while Nyandarua/Oljoro Orok Salient/[particulars withheld] was given to the petitioner. She was to pay Kshs. 1,000, 000.00 to the petitioner to compensate him for the loss of the matrimonial home and to cover for the disparity in the values of the two assets.

6. The petitioner was aggrieved by that order and appealed. The Court of Appeal did not overturn the order of the superior court, it only tinkered with it, the petitioner was still to get Nyandarua/Oljoro Orok Salient/[particulars withheld], while the respondent took Nairobi Block 32/[particulars withheld]. The only thing that was to change was the sum of Kshs. 1,000, 000.00. Instead of that amount being paid to the petitioner by the respondent, the respondent was directed to get the two properties valued and within 120 days from the date of the filing of the valuation reports in court to pay the difference in the values to the petitioner.

7. The respondent, from what I can decipher from the record before me, did not comply with the said order, by getting the properties valued and paying the shortfall between the values of the two assets to the petitioner within the 120 days from the date of the filing of the valuation reports. It is the petitioner who caused the properties to be valued, and who filed the valuation reports in court. To date the respondent

has not taken any step to comply with the Court of Appeal decision, hence the move by the petitioner to have directions given on compliance with the said order. The Court of Appeal had ordered that there was liberty on the part of the parties to move the High Court appropriately. The petitioner has done so.

8. It has been argued, rather persuasively, that the Court of Appeal had not ordered sale of the subject property. That is indeed true. But whether the property is to be sold or not is matter for the High Court which is the trial court which made the original decree, and which is bound in law to oversee the execution of the decree in the matter.

9. The Court of Appeal made a very specific order directed at the respondent, telling her to have the two assets valued, and after that file the valuation reports in court, and 120 days after the filing pay to the petitioner the shortfall between the values of the two assets. The respondent has not complied with that order made on 9<sup>th</sup> March 2015. She has made no proposals whatsoever on the way out of the stalemate. Surely, the petitioner cannot just sit and wring his fingers waiting *ad infinitum* for the respondent to act. Litigation must come to an end.

10. The failure by the respondent to comply with the Court of Appeal order, no doubt, has consequences. The said consequences are for determination by this court, for the Court of Appeal gave the parties liberty to apply to the High Court with regard to implementation of the order. It is in that respect that this court was moved by the petitioner following the failure by the respondent to act as ordered by the Court of Appeal.

11. I do not find any basis for review or variation or setting aside of the orders of 8<sup>th</sup> September 2016 in the circumstances. The Motion dated 14<sup>th</sup> November 2016 is for dismissal. Each party shall bear their own costs. The interim orders made on 17<sup>th</sup> November 2016 are accordingly discharged.

12. It is so directed.

**DATED, SIGNED and DELIVERED at NAIROBI this 3<sup>RD</sup> DAY OF FEBRUARY, 2017.**

**W. MUSYOKA**

**JUDGE**