



**REPUBLIC OF KENYA**

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

**CIVIL SUIT NO. 12 OF 2015 (OS)**

**N. W. G .....**PLAINTIFF****

**VERSUS**

**S. M. K.....**DEFENDANT****

**RULING**

1. The Originating Summons dated 3<sup>rd</sup> August 2015, which was filed at this registry on 11<sup>th</sup> August 2015 by the plaintiff, seeks the following principal orders: -

(a) A declaration that the property known as House No. [particulars withheld] Buru Buru Phase II was acquired and developed by funds and efforts of the applicant wholly to the exclusion of the respondent;

(b) A declaration that the applicant is entitled to full value of the said property estimated to be Kshs 8,000,000.00; and

(c) A declaration that the household goods within the house valued at Kshs 300,000.00 or thereabout were acquired by the applicant and that the respondent holds the same in trust for her.

2. The suit is founded on the grounds set out on the face of the application, as well as on the facts deposed in the affidavit in support. The parties contracted a statutory marriage on 26<sup>th</sup> December 1998, and have not been blessed with issue. Their union has fallen into tough times, culminating in divorce proceedings in CMDC No. [particulars withheld] of 2013. It is alleged that at the time of contracting the marriage the applicant was working at NSSF, which I presume stands for the National Social Security Fund, while the respondent was unemployed or was not working. The applicant then acquired the subject property through a mortgage scheme offered by her employer. She was run out of the house by the respondent in 2013. She states that she has been kept out of the property, and the respondent is busy carrying out alterations to it without her consent.

3. Several documents are attached to the affidavit to buttress the applicant's case. There is a certificate of marriage, serial number [particulars withheld] showing that the parties went through a ceremony of marriage at the Full Gospel Church, Buru Buru, sometime in 1998. There is also copy of a petition for dissolution of that marriage filed in Milimani CMDC No. [particulars withheld] of 2013. There is a faint copy of certificate of lease presumably in respect of the subject property. It is however so faint that I am unable to read its critical details. There is also copy of correspondence exchanged between NSSF and a firm of advocates over staff loans; unfortunately the same says nothing about the applicant. There is too copy of a cheque drawn in favour of a firm of advocates for a sum of Kshs. 1,756,216.00.

4. The respondent appears to have been served with court process for he did appear on 18<sup>th</sup> December 2015 but he did not file any response to it. On account of the lack of opposition to the suit, the applicant sought, on 15<sup>th</sup> May 2016 to have the matter disposed of by way of written submissions. Her request was acceded to. Curiously, it was after those directions that the respondent filed his response to the suit. His replying affidavit was filed without leave of court. I note that both sides did file their respective written submissions.

5. I have looked at the documents annexed in support of the summons, and I am not satisfied that I can

dispose of the matter before me purely on written submissions. The most critical document here is the certificate of lease. It is through this document that the applicant seeks to demonstrate that she is the sole owner of the property given that she is the sole proprietor of the lease. Yet the copy attached to the supporting affidavit is so faint that it is a completely useless piece of paper. I cannot read the land reference number or the details of the proprietorship. The other documents attached to the affidavit relates to staff loans and cheques, but none of them make any reference to the applicant. There is no knowing whether the applicant had anything to do with them. There is need for life to be breathed into these documents. It would work injustice if I were to proceed on the basis of what is before me without taking oral evidence. If I were to do so, no doubt, I would have no option but to dismiss the suit.

6. In the end I direct that the suit herein be disposed of by way of oral and affidavit evidence. Parties to obtain dates for hearing at the registry.

**DATED, SIGNED and DELIVERED at NAIROBI this 17<sup>TH</sup> DAY OF MARCH, 2017.**

**W. MUSYOKA**

**JUDGE**