

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 10 OF 2016 (OS)

D K B.....PLAINTIFF

VERSUS

K S B.....DEFENDANT

RULING

1. The suit herein is between husband and wife for division of matrimonial property. It was originated by a summons dated 11th December 2015 and filed herein on 17th December 2015. I am invited to determine two applications, one being a Motion dated 11th December 2015 and the other a Motion dated 10th August 2016.

2. The Motion dated 11th December 2015 seeks orders to restrain alienation of the assets listed in the Originating Summons as matrimonial property pending hearing and determination of the summons. The applicant evinces fear that the said assets may be disposed of before the matter is determined which would render the suit useless. The parties married in 1998. The response to the application is by an affidavit sworn on 15th June 2016 by the defendant. He concedes the three landed properties, but urges that he acquired them single-handedly. He states that plaintiff was at the time not working and could not possibly have contributed to the acquisition of the said assets. One property is a limited liability company, [Particulars Withheld] Machinery and Tools Ltd. He asserts that he is only a director in the company, but not a shareholder in the company.

3. The second Motion is by the defendant, limited to a property known as LR No. [Particulars Withheld]. He complains that the title document relating to the said property was in his name, but had been taken away by the plaintiff. He fears that she could transfer the same. He has attached a document to his affidavit showing that the plaintiff's counsel had conceded that they had possession of the original title document which had been given to them for the purpose of having it transferred to the name of the plaintiff. It would appear that the application is not opposed for I have not come across any reply on record.

4. Directions were made on 3rd November 2016 for the disposal of the two applications by way of written submissions. There has been compliance with the directions, for written submissions have been filed by both sides. I have gone through them and noted the arguments made in them.

5. Regarding the application dated 11th December 2015, I do note that the defendant concedes that the three landed assets – LR Nos. [Particulars Withheld] South C, [Particulars Withheld] Parklands and [Particulars Withheld] Parklands – were all acquired during the subsistence of their marriage. He asserts that the assets are his for he acquired them single-handedly. There is high probability that the said property may be disposed of prior to the disposal of the suit. I believe a case has been made out for preservation of the assets. However, I do not think a case has been made out regarding [Particulars Withheld] Machinery and Tools Ltd. The plaintiff has not demonstrated that the defendant holds any interest in the same.

6. On the second application, I note that the application is not opposed. I note too that there is correspondence showing that the plaintiff is having possession of the original title to LR No. [Particulars Withheld]. It is asserted in the annexed letter that she was not ready to release it and she indicates that she wishes to have it transferred to her name. The property is listed in the Originating Summons. I wonder

why she would ask the court to make orders on this property when on the other hand she asserts that the defendant had given her the title documents with instructions that she should transfer it to her name.

7. Having taken everything into consideration I shall make the following orders: -

(a) That I allow the Motion dated 11th December 2015 in terms of prayer 3(a), (b) and (c);

(b) That the Motion dated 10th August 2016 is allowed in terms of prayers 3, 5 and 7; and

(c) That costs shall be in the cause.

DATED, SIGNED and DELIVERED at NAIROBI this 12TH DAY OF MAY, 2017.

W. MUSYOKA

JUDGE