



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 36 OF 2013 (OS)

IN THE MATTER OF SECTION 17 OF THE MARRIED WOMEN'S PROPERTY ACT (1882)

IN THE MATTER OF THE LAND REGISTRATION ACT 2012

AND

IN THE MATTER OF THE REGISTRATION ACT 2012

S B.....APPLICANT/RESPONDENT

VERSUS

G S BRESPONDENT/APPLICANT

R U L I N G

1. By a Notice of Motion dated 22nd September 2016 brought under **Section 3A** of the **Civil Procedure Act** the Respondent/Applicant sought for orders that:

- i) The Applicant/Respondent (wife) do deposit the Title Deed to Nairobi/Block [particulars withheld] in court pending the determination of the suit to be kept in the strong room.
- ii) Nairobi/Block [particulars withheld] be rented out pending the determination of this suit and the net rental income be shared equally between the parties.

2. The application was based on the supporting affidavit of learned counsel Mr. Virinder Goswami. In the grounds of the application Mr. Goswami states that the Applicant/Respondent (wife) is a business woman who resides at the parties' matrimonial home being [particulars withheld], Harrow in U.K together with the children of the marriage since August 2006. That the Respondent/Applicant (husband) returned from the U.K and resided at Nairobi/Block [particulars withheld], until the 6th February 2013 when the Applicant/Respondent (wife) came to Nairobi from London and evicted him and his live-in female companion. Thereafter she returned to the U.K.

3. Counsel avers that Nairobi/Block [particulars withheld] is one of the matrimonial assets which form the subject matter of this suit and the Title Deed thereto is in the custody of the Applicant/Respondent. That it would be prudent for the title to be deposited in court pending determination by the court.

4. Mr. Goswami, further averred that the Applicant/Respondent (wife) only comes to Nairobi for purposes of this suit and for the rest of the time Nairobi/Block [particulars withheld] remains unoccupied. He contended that it would be for the benefit of both parties if the said property was rented out and the net

income shared equally between the parties.

5. Mr. Goswani prayed ahead of the hearing date to have the Applicant cross-examined on her passport and the allegations she had made that he still held the title to the Nairobi home, 19 years after the conveyancing he did for the couple. The hearing of the main OS was set for the 6th April, 2017 and Miss Kamau learned Counsel for the Applicant/Respondent was given 14 days to supply Mr. Goswami with the passport of her client for purposes of cross examination as to her entries in to Kenya. The passport was not availed.

6. On the hearing date the matter could not proceed because Miss Kamau asked for leave to put in an application to cease acting for the Applicant/Respondent (wife). In a rejoinder, Mr. Goswami contended that this would be the third time the Applicant/Respondent was changing advocates, a clear indication that she was treating these judicial proceedings very casually. Counsel further averred that the reluctance by the Applicant /Respondent to provide a copy of her passport was proof that her swearing that she currently resided in Kenya was not true. Counsel maintained that the matrimonial home in Nairobi was being wasted as both parties reside outside Nairobi.

7. Mr. Goswami urged the court to make the order regarding the renting of the subject property as this would benefit both the parties.

APPLICANT/RESPONDENT'S SUBMISSIONS

8. On the 6th April, 2017 learned Counsel Mr. Ngugi who held brief for M/s. Kamau, submitted that she had not been able to get instructions from her client and prayed for 21 days to file an application for leave of the court to cease acting for the Applicant/Respondent.

9. M/s. Kamau had earlier filed written submissions in which she stated that her client lived in Nairobi although her children lived in London. Further that the London matrimonial home was facing imminent auction because the Respondent/Applicant took a loan charging it as security and had not repaid it. She argued that Mr. Goswami held the title documents to the Nairobi matrimonial home.

ANALYSIS AND FINDINGS

10. The only question for determination in this matter at this point is whether the Nairobi/Block [particulars withheld] matrimonial home should be rented out pending the hearing and determination of the main suit.

11. The court gave directions on the 27th February 2017 for the Applicant/Respondent to supply the Respondent/Applicant with a copy of her passport to establish whether she resided in Kenya or not. The Applicant did not avail her passport nor did she avail herself to her counsel to give instructions. As submitted by Counsel for the Respondent/Applicant, the matrimonial home in Nairobi (Nairobi/Block [particulars withheld]) would appear to be going to waste as both parties reside outside Kenya.

12. The issue raised by the Applicant that the London matrimonial home is facing imminent auction because the Respondent/Applicant charged it as security for a loan that he failed to repay is an issue that will have to be determined at the hearing of the main suit. Even so the Applicant has not made any indication that if the matrimonial home in London is auctioned by any chance, she intends to move back to occupy the matrimonial home in Nairobi (Nairobi/Block [particulars withheld]).

13. From the Applicant's reticence to avail a copy of her passport for scrutiny, the court has no material before it to conclude that she indeed resides in Nairobi and has need of Nairobi/Block [particulars withheld] in order for it not to be rented as prayed by the Respondent/Applicant. None of the parties is disputing at this point that Nairobi/Block [particulars withheld] is a matrimonial property.

14. For the foregoing reasons the court finds that it would be prudent for Nairobi/Block [particulars withheld] to be rented out as has been prayed, on interim basis to avoid wasting it pending the hearing

and determination of the main suit. The proceeds therefrom shall be shared between the parties. on a sharing ratio to be agreed between the parties

Each party shall bear their own costs.

It is so ordered.

SIGNED DATED and DELIVERED in open court this 3rd day of May 2017.

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L. ACHODE

JUDGE