



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL SUIT NO. 31 OF 2013 (OS)

J M W.....PLAINTIFF

VERSUS

P M O.....DEFENDANT

JUDGMENT

1. The Originating Summons herein dated 7th June 2013 was filed at this registry on 12th June 2013 by the plaintiff raising various questions relating to Ngong/Ngong/[.....], those that are relevant to this determination being :-

- a. that Ngong/Ngong/[...] had been bought solely by her during matrimony although registered in the joint names of the parties, what was the extent of the plaintiff's interests in the said property;
- b. that the matrimonial house was built on the said property through joint contributions of the parties with the plaintiff making the larger contribution, what would be the plaintiff's interests in the said house; and
- c. That should the plaintiff's portion of the said property be transferred to her name.

2. In the affidavit in support, the plaintiff states that the parties married in 2002, had one child between them, the plaintiff bought Ngong/Ngong/[.....] whereupon both of them contributed to build a family home, she was subsequently forced out of the home together with her child by the cruelty of the defendant, and that she filed a divorce cause on 22nd April 2013. She avers to have bought the furniture and equipment for the house, unfortunately when she was being forced out she left with nothing save her clothes. She claims that as she paid the purchase price for the house, with the defendant only contributing to the construction of the house thereon, she was entitled to more than one half thereof. The plaintiff states that she is the one who took care of the children and attended to their education and school related activities.

3. In his affidavit in response to the suit, sworn on an unknown date in 2013 but filed herein on 28th August 2013, the defendant concedes the marriage, and the fact that it produced one child, he however contests the allegation that it was the plaintiff who bought Ngong/Ngong/[.....] all alone with no help from him, asserting that she did not even contribute a single shilling to its purchase. He explains that prior to the marriage he had a *matatu* which he sold and utilized the sale proceeds to buy Ngong/Ngong/[.....] and to put up the foundation for the house which stands on it. He asserts that he was a senior officer at the National Health Insurance Fund, earning a fat salary that enabled him to construct the house without

difficulty. He dismisses the plaintiff as having been a mere civil servant earning a small salary which was utilized for food and groceries. He also states that the plaintiff did not furnish the house as claimed. He denied chasing her from the house, saying that he came home one day to find that she had removed everything from the house and moved in with another man. He has attached copies of bank documents, a motor vehicle logbook and pay slips to support his assertions.

4. In a rejoinder to the averments made in that affidavit, the plaintiff swore a supplementary affidavit on 20th August 2013. She reiterates that she bought Ngong/Ngong/[.....] single handedly without any support from the defendant with funds that she had saved up before she met him. She says she had obtained a loan from her savings and credit cooperative society and bought a car, which she subsequently sold and used the proceeds to buy Ngong/Ngong/[.....]. She contends that the defendant did not use the proceeds of sale of his *matatu* to purchase the plot in question, instead he used the money to buy a car. She claims to have contributed upto 70% towards the building of the matrimonial home, with the defendant contributing only upto Kshs. 300,000.00. She further says that she bought each of the household items in house after they had disposed of the furniture that they each had prior to the marriage. She denied removing household goods from the house, saying that after the defendant beat her up very badly she moved out the next day with the child, and that she only took with her her own clothes and those of the child, and a television set. She appears to suggest that she bought a vehicle after she separated from the defendant.

5. The matter was heard orally on 26th March 2016. The plaintiff testified. She gave vent to the averments made in her pleadings and affidavits. She was cross-examined. The defendant was scheduled to testify on 18th August 2016. Neither he nor his advocate attended court. The proceedings were closed and the matter reserved for judgment.

6. Although the plaintiff claims that she is the one who paid for the property in question, she has provided no proof whatsoever of that assertion. I expected that she would place copies of a sale agreement signed between her and the seller of the property, copies of cheques or other evidence that the purchase money came from her. None of such evidence was tendered. Instead, she provided the evidence relating to other property that she bought after the separation. The same case applies to the household items and her contribution to the construction of the house that stands on the property.

7. The defendant on his part also asserts to have bought the property without any support from the plaintiff. Like the plaintiff, he has provided no proof of that claim. He has not produced any sale agreement or documents to evidence payment of the purchase price by him. The same obtains about the construction of the house. He has alleged that he got a loan from the National Bank of Kenya, and has attached documents to show that such a loan was indeed obtained, but there is no proof that the said money was utilized in the construction of the house. He has not provided any documents on the construction, such as building plans, receipts for purchase of materials, records of applications for connections of electricity or water, among others.

8. The material placed on record by the parties is by all standards vague on the particulars. It is not stated with any particularity when the property was bought, and from whom. The parties have also not shared with the court documents on the development of the property. It is my view that the parties have not made a serious effort towards establishing the claims that they have placed before the court, or at any rate, are not clear on what they should have placed before me in support of their case.

9. The most critical piece of evidence relates to the existence of the property that I am invited to make orders on. It must be proved that such an asset exists so that the court does not make orders blindly, and possibly in vain. It would appear that the property is registered, and therefore there should be a title document in respect of it. It is alleged that it is in the joint names of the parties hereto. None of the parties has had a presence of mind to exhibit a copy of the title deed issued following the alleged transfer of Ngong/Ngong/[.....] to their names. The plaintiff did not produce the original title, or copy thereof, at the trial. I do note that both sides accuse each other of holding on to the original title deed. So, if the original has been misplaced, then they ought to have obtained a certificate of official search from the relevant land registry. As matters stand, there is no proof that that property exists, or that it is registered in the joint names of the parties.

10. Whatever the case, I do not find any basis for grant of the orders sought herein for it has not been proved that Ngong/Ngong/ [.....] exists and that it is registered in the joint names of the parties hereto. Consequently, I shall dismiss the Originating Summons dated 7th June 2013 with no order as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 2ND DAY OF JUNE, 2017.

W. MUSYOKA

JUDGE