



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 24 OF 2007

JANE WACHU KAGENI.....PLAINTIFF

VERSUS

PETER MBUGUA KAGENI.....DEFENDANT

JUDGMENT

1. The Originating Summons herein dated 14th May 2007 was filed at this registry by the plaintiff seeking several declarations. The main declaratory orders sought are:-

- a. That the plaintiff and the defendant hold, in equal shares, all the properties acquired and or developed by their joint efforts during the subsistence of the marriage some of which are registered or in possession of the defendant;
- b. That the defendant holds the said property in trust for the plaintiff; and
- c. That the said properties be divided equally or, in the alternative, the same be sold and the proceeds therefrom divided equally between the parties.

2. The principal assets are listed as –

- (a) Nairobi/Block 110/804,
- (b) LR 6746/26 Bahati, Nakuru,
- (c) Dagoretti/Kinoo/T.576,
- (d) Undeveloped 14 acres piece of land at Mai Mahiu, and
- (e) Assorted household goods, items and appliances.

3. The facts upon which the application is founded are set out in the affidavit sworn on 14th May 2007 by the applicant. She deposes that the defendant was her former husband, having married him in 1965, and divorced him during the pendency of their proceedings. They had four children together, and jointly contributed to the acquisition of the property set out in paragraph 2 here above. She avers that both of them were working at the time they got married, but neither had any property worth talking about. She asserts that the matrimonial home stood on Dagoretti/Kinoo/T.576, which was acquired with funds raised from sale of a family vehicle, that had been purchased using money from her own savings. She lived in the property in question, after the defendant allegedly left to live elsewhere with another woman.

4. The defendant's response to the application is in the affidavit sworn on 16th August 2007. He avers that

at the time he married the plaintiff she was not working and that it was he who got her a job as a school teacher. He asserts that all the assets listed in paragraph 2 hereof were acquired by him solely without assistance or contribution from the plaintiff. He has gone on to give details of how he acquired loans to purchase the said assets.

5. Only the plaintiff gave oral evidence. She testified on 28th February 2012. Her oral testimony breathed life to the averments made in her affidavit in support of the Originating Summons. She then went into details on how each of the assets was acquired.

6. When the matter came up for further hearing on 19th August 2013, the defendant caused the adjournment of the matter on the ground that counsel had lost their file, and wanted to reconstruct the same from copies obtained from the court file. It was recorded that that would be the last adjournment on the part of the defendant. The story was the same on 26th February 2013 when the matter came up for hearing next. The plaintiff closed her case, and urged the court to decide the matter on the available evidence.

7. As the defendant did not adduce any evidence in opposition to the application, the allegations made in his replying affidavit were not tested, and the testimony of the plaintiff went unchallenged. I find no basis upon which I can hold that the plaintiff's case is not established.

8. Consequently, I do hereby find for the plaintiff and allow the application by way of Originating Summons dated 14th May 2007, in terms of the prayers set out therein, except that the limb on personal and household goods is vague for no evidence was led on the nature and type of the goods the subject of the prayer. That aspect of the prayer is hereby dismissed. The plaintiff shall have costs of the application.

DATED, SIGNED and DELIVERED at NAIROBI this 8TH DAY OF JULY, 2016.

W. MUSYOKA

JUDGE