

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA, AT NAIROBI

DIVORCE CAUSE NO. 254 OF 2013

C KPETITIONER

-VERSUS-

A R C 1ST RESPONDENT

Q N LIMITED 2ND RESPONDENT

RULING

1. The Motion dated 16th September 2014 seeks the striking out of the 2nd respondent from the proceedings.
2. The grounds upon which it is premised are set out on the face of the application, while the factual background is given in the affidavit of M K N. It is argued that the amended petition did not disclose any cause of action against the 2nd respondent, on the grounds that the 2nd respondent, a limited liability company known as Q N Ltd, had nothing to do with the dispute between the petitioner and the 1st respondent, and that the said 1st respondent had no proprietary right or interest in the property owned by the 2nd respondent.
3. Exhibited to the application is a letter from the Registry of Companies, dated 25th May 2014, confirming the directorship and shareholding of the 2nd respondent company. The shareholders are listed as I M G and M K N. The directors are the two shareholders and the 1st respondent and another. The 1st respondent is described as a non-director shareholder.
4. There is on record a reply to the application by the 1st respondent, being an affidavit sworn on 8th October 2014. He confirms that although he is a director in the 2nd respondent, he did not hold any shares in the company. He explains that although he had intended to buy the subject property, being LR No. [Particulars withheld], Karen, Nairobi, from the 2nd respondent with funds raised from sale of property that he had bought and registered in the name of the petitioner, due to breakdown of the marriage between him and the petitioner he was unable to dispose of his assets to raise funds to purchase the property.
5. The petitioner replied to the application dated 16th September 2014 by her affidavit sworn on an unknown date in 2014 but filed in court on 7th October 2014. She asserts that LR No. [Particular withheld], Karen, Nairobi, was her matrimonial home. She claims that the 2nd respondent is a vehicle through which the 1st respondent owns the matrimonial property. She states that the shareholders of the 2nd respondent were the 1st respondents' advocates and her friends.
6. I directed on 25th September 2014 that the parties do file skeletal submissions to guide me in disposing of the application dated 26th September 2014. All the parties did file their respective submissions, summarizing the facts and citing the relevant case law.

7. I have carefully perused through the papers filed herein, being the pleadings, applications, affidavits and annexures. The only issue for determination in respect of the application dated 16th September 2014 is whether there is any plausible reason for the 2nd respondent to be a party in the proceedings.
8. The 2nd respondent was not in the initial pleadings, it was introduced into the matter through amendment of the petition. It is alleged that the petitioner resides on LR No. [Particulars withheld] owned by the 2nd respondent, which property is beneficially owned by the 1st respondent. It is pleaded that the shareholders of the 2nd respondent are advocates for the 1st respondent. No final orders are sought against the 2nd respondent as such. The orders sought in the petition in respect of the 2nd respondent are meant to be interlocutory in nature to subsist pending the determination of the cause. They are not for granting at the conclusion of the suit.
9. It is not disputed that the petitioner resides in LR No. [Particulars withheld] which is owned by the 2nd respondent. It is asserted by the petitioner that 2nd respondent is a company owned by the 1st respondent and the shareholders are his advocates. I understand her to be saying that the said shareholders are mere nominees for the 1st respondent. It would appear she would be seeking to pierce the corporate veil to reveal the real owners of the company. That no doubt cannot be done at the interlocutory stage, it is a matter for determination at the hearing of the main cause.
10. There is a prayer in the amended petition for a declaration of the petitioner's rights in LR No. [Particulars withheld]. The said property is registered in the name of the 2nd respondent. A determination of the right over that property cannot be done in proceedings to which registered owner is not a party. The 2nd respondent must be heard on the matter.
11. In view of the above, I do not find merit in the application dated 16th September 2014 and I do hereby dismiss the same with costs to the petitioner.

DATED, SIGNED and DELIVERED at NAIROBI this 2ND DAY OF OCTOBER, 2015.

W. MUSYOKA

JUDGE