

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 13 OF 2009 (O.S)

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

BETWEEN

T N T APPLICANT

AND

M N TRESPONDENT

RULING

1. The hearing of the Originating Summons dated 30th April 2009 commenced on 13th October 2013. When the matter came up for further hearing on 5th December 2013, Ms. Wambui Njogu stated that she had been served with six (6) volumes of a bundle of documents which were not supported by an affidavit. Counsel appearing then agreed that the respondent could file an affidavit to support the documents, with leave to the applicant.
2. Towards that end, the respondent swore an affidavit on 22nd January 2014 and lodged it in court the same day. It stated at paragraph 3 what each of the six (6) volumes was about.
3. It is not clear whether it was in reply to the affidavit of the respondent of 22nd January 2014, but the applicant swore and filed a further supplementary affidavit on 12th June 2014. There is a reply by the respondent sworn on 27th August 2014 to the affidavit of 12th June 2014, which purported the applicant to swear a further affidavit on 2nd September 2014.
4. Counsel for the applicant was not satisfied with the affidavits filed by the respondent, taking the position that the same did not explain the documents in the six volumes. Consequently, I directed counsel to put in written submissions on whether a further affidavit should be filed to explain the volumes or whether the volumes should be struck out. The parties complied, for there are on record written submissions filed on 24th October 2014 and 18th December 2014, respectively.
5. I have carefully gone through the record, paying particular attention to the affidavits filed in 2014 and the written submissions.
6. I have noted that the respondent has explained in paragraph 3, of his affidavit sworn on 22nd January 2014, what each of the volumes of the bundle of documents contains. I have noted that thereafter the applicant filed two affidavits in response to the respondent's affidavit of 22nd January 2014. Only the first three volumes are in the court file. I have perused the three and noted that they are divided into clearly marked sections indicating what the documents each section are intended to prove.
7. In my view there is sufficient explanation in the affidavit of 22nd January 2014, as well as in the volumes themselves, of what each of the documents and the bundle are about. In any event, the respondent will at one point take the witness stand, and be taken through these documents by his counsel. There shall be opportunity for the applicant to cross-examine him on the contents of

these documents.

8. It is my conclusion that I do not find basis for the respondent to file a further affidavit to explain the six (6) volumes of the bundle of documents, nor for the striking out of the bundle from the court record.
9. The matter shall proceed from where we had reached on 3rd October 2013. The respondent shall cause the other three (3) volumes to be put in the court file. Dates for further hearing to be obtained at the registry to be given on priority basis.

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

W. MUSYOKA

JUDGE