



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**CIVIL CASE NO. 4 OF 2014**

**J N M.....PLAINTIFF**

**VERSUS**

**W W M.....DEFENDANT**

**RULING**

This is an application by the plaintiff for the division of matrimonial property which was acquired during the marriage between him and the defendant. The marriage between the parties was dissolved following the confirmation of the decree *nisi* by the court of the Senior Principal Magistrate at Embu on 10th September, 2012. By virtue of that confirmation, the trial court in the divorce proceedings in divorce cause No.[particulars withheld] of 2009 issued a certificate of dissolution of the marriage on 10th September, 2012, which is a condition precedent to sharing of the matrimonial property.

The properties acquired during their marriage are as follows:

- a. Land parcel Gaturi/Weru/[particulars withheld] – approximately 0.20 ha
- b. Land parcel Gaturi/Weru/[particulars withheld] – approximately 0.10 ha
- c. Land parcel Nthawa/Riandu/[particulars withheld] – approximately 0.7 ha
- d. Land parcel Nthawa/Riandu/[particulars withheld] – approximately 0.5 ha

Counsel for the plaintiff in his written submissions has proposed that the above named properties be divided as follows:

- Gaturi/Weru/[particulars withheld] - to be shared equally
- Gaturi/Weru/[particulars withheld] - to be shared equally
- Nthawa/Riandu/[particulars withheld] - to John Mwara Njagi wholly
- Nthawa/Riandu/[particulars withheld] - to Wincate Wanjira Mwara wholly

The submission of counsel for the plaintiff is based on sections 6 and 7 of the Matrimonial Property Act (Act No. 49 of 2013 of the Laws of Kenya) in addition to Article 45 (3) of the 2010 Constitution. In terms of those provisions of the Constitution, “*parties to a marriage are entitled to equal rights at the time of marriage, during the marriage and at the dissolution of the marriage*”. Furthermore, according to section 7 of the Matrimonial Property Act, ownership of the matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition. The section goes further to direct that the property shall be divided between the spouses once their marriage is dissolved.

The provisions of the Matrimonial Property Act do not lay down the formula for the sharing of the matrimonial property once a marriage is dissolved. It only provides for vesting of ownership in the spouses according to the contribution of either spouse. The plaintiff is a clinical officer and the defendant

is is a nurse, whose monetary earning capacity is almost the same.

Counsel for the defendant also filed written submissions. According to them the matrimonial property should be divided as follows:

a) Land parcels:

Gatruri/Weru/[particulars withheld] } To J N M wholly

Nthawa/Riandu/[particulars withheld] }

b) Land parcels

Gaturi/Weru/[particulars withheld] } To W W M wholly

Nthawa/Riandu/[particulars withheld] }

Furthermore, counsel for the defendant has relied on the following authorities *Mary Wairimu Mwangi v John Mwangi Mbutia (2012) eKLR* (Civil Case No. 84 of 2006 at Nyeri) and *C.M.N v. A.W.M (2013) eKLR* ( ELC Case No. 208 of 2012 at Nairobi) both of them being decisions of the High Court of Kenya

I have considered the pleadings of both counsel. I have also considered their written submissions. It is common cause that the above properties were acquired during the subsistence of the marriage between the parties. It is also common cause that they both contributed to the acquisition of the properties in issue. Furthermore, I also find that land parcel No. Gaturi/Weru/[particulars withheld] is registered in the name of the defendant. In size, it measures 0.20 ha. Additionally, land reference No. Gaturi/Weru/[particulars withheld] is registered in the name of J N M . J N M is also the registered owner of land parcels Nos. Nthawa/Riandu/[particulars withheld] I find that Land parcel Nos. Nthawa/Riandu/[particulars withheld] are almost equal in size. However, land reference Nos. Gaturi/Weru/[particulars withheld] differ substantially in terms of their sizes.

In the circumstances, having considered the pleadings and the submissions and the applicable law, I find that the matrimonial property in issue should be shared in the following manner:

- Gaturi/Weru/[particulars withheld] - to be shared equally
- Gaturi/Weru/[particulars withheld] - to be shared equally
- Nthawa/Riandu/[particulars withheld] - to W W M wholly
- Nthawa/Riandu/ [particulars withheld] - to J N M wholly

There will be no orders as to costs as the matter involves former married spouses.

**RULING DATED, SIGNED and DELIVERED** in open court at **EMBU** this.. 5<sup>th</sup> .. day of **NOVEMBER, .2015.**

In the presence of both counsel for the parties

Court clerk Mr Nyaga

**J. M. BWONWONGA**

**JUDGE**

**05.11.15.**