

REPUBLIC OF KENYA

IN THE HIGH COURT AT MALINDI

CIVIL SUIT NO. 87 OF 2007(O.S)

IN THE MATTER OF THE MARRIED WOMEN'S PROPERTY ACT, 1882

BETWEEN

L M J B.....PLAINTIFF

VERSUS

L K B.....DEFENDANT

RULING

1. By the application filed on 18.3.14 the Defendant /Applicant seeks an order directing the Registrar of Titles Mombasa to delete the names of the Plaintiff, L M J B , now deceased, from the register of titles in respect of the land parcels described as no. LR [particulars withheld] and [particulars withheld] and retain the name of L K B as sole proprietor.
2. The background to the application is contained in the Applicant's affidavit. The deceased Plaintiff and Defendant were parties to these proceedings. The subject properties were jointly owned by the parties in the course of their dissolved marriage. On 8th September, 2011 the parties recorded a memorandum of understanding which was subsequently adopted as an order of the court. By the said arrangement, the deceased Plaintiff relinquished all his rights and interests in the subject property. Upon the Defendant having fulfilled her part of the agreement, she received the original titles to the property. The Applicant however has been unable to secure the registration of property in her name as the sole owner as the Registrar declined to give effect to the court order claiming that succession proceedings ought to be taken out respecting the deceased Plaintiff.
3. Indeed there is now on record Counsel acting for one A P K who claims to be the legal administrator *ad litem* over the estate of the deceased. She opposes the application by the Defendant and asserts the Defendant has not fully performed her part of the consent agreement and thus no order ought to issue in her favour. There is also filed a preliminary objection to the effect that the court is functus officio having delivered its judgment on 28th October, 2009. Finally, it is asserted on behalf of the *ad litem* administrator of the estate of the Plaintiff that the Registrar ought to be party to these proceedings.
4. The parties arguments proceeded more or less in tandem with filed documents. I have now considered the application the rival affidavits and submissions. I have also looked at the proceedings herein. I take the following view of the matter. The present application is no different from the deceased's application filed on 21st December, 2012 and the subject of my ruling delivered on 4th November, 2013. That application had sought to have the present Applicant committed to civil jail for disobedience of a court order. Like the present application the subject matter was the consent order recorded by the deceased Plaintiff and the present applicant (Defendant) on 8th September, 2011.
5. In my ruling I took the following view regarding that consent :

“That consent in my opinion was recorded in execution and or mutual modification of the judgment of Omondi, J. The consent went further to quantify various payments to be made in furtherance of the judgment. It would appear that the Plaintiff (now deceased) is now aggrieved that a sum of Kshs. 1 Million due to him from the Defendant is still outstanding. This court cannot determine such matters without proper taking of accounts. In my

considered view, the present application is a disguised application for execution of the judgment herein. The proper course is for the Plaintiff to extract the decree and commence execution proceedings before the Deputy Registrar in the usual way. For these reasons I decline the Plaintiff's application..."

6. In the same way the Defendant's current Application is one for execution pure and simple , whose proper forum is before the Deputy Registrar. The consent of the Parties is the final judgment of this court. The terms therein are clear enough. In order to bring this longstanding saga to an end, let parties appear before the Deputy Registrar on a date to be taken immediately in the registry for purposes of taking accounts, and thereafter, if any party desires to proceed with execution , they can move the Deputy Registrar as appropriate. The Defendant's application is declined at this stage with no orders as to costs.

Delivered and signed this 7th day of **July, 2014** in the presence of Mr. Juma for the Applicant, Mr. Mwadilo for the Respondent

C. W. Meoli

JUDGE