



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CAUSE NO 69 OF 2011 (O.S)

S O O.....PETITIONER

VERSUS

M B O.....RESPONDENT

RULING

1. The applicant filed an originating summons dated 20th December, 2011 brought under **Order 37 Civil Procedure Rules & Section 17 of the Married Women's Property Act 1882** (repealed) seeking the following orders;
 1. A declaration that all property described as L.R NO. *[particulars withheld]* situated in Nairobi jointly registered in the name of the Applicant and Respondent be owned solely by the Applicant.
 2. A declaration that Plot No. *[particulars withheld]* (Trans Nzoia District) registered in the name of the Applicant remains his sole property.
 3. A declaration that residential Plot *[particulars withheld]* in Milimani Estate, Kitale Municipality remains the Applicants sole property.
 4. A declaration that *[particulars withheld]*, in Kisii Municipality remains owned by the Respondent.
 5. By Agreement entered between the Applicant and Respondent dated 4th August, 2008, the Applicant was to pay the Respondent Ksh.500, 000/= as full and final settlement of any claims.
2. The Court file was reconstructed through an application by the Petitioner filed on 13th April, 2012. By an application filed by the Petitioner on 22/12/2011 the Court allowed the Petitioner to serve the Respondent, leave to serve outside the jurisdiction of Kenya Courts by advertisement in regional newspapers in the state of North Carolina and in the United States.
3. By an affidavit of service filed on 3rd June, 2014 the Petitioner advocate Jaoko Alexander confirmed service of the application to the Respondent through publication in the Herald Sun on 16th November, 2011 and copy was attached and presented to the Court. On 4th April, 2013, the same advertisement was published in the Winston – Salem Journal and a copy of the same is attached. Despite service there has been no communication or replying affidavit filed by the Respondent.
4. The supporting affidavit of the applicant attached to the application confirms that the Petitioner and Respondent cohabited and lived together from 1989-1995 and thereafter the Respondent relocated to the United States.
5. They had two (2) children namely; J O O and N N O now aged twenty five (25) years and eight (8) years respectively.
6. They had properties as detailed in paragraph 4 of the affidavit.
7. On 4th August, 2008, the Applicant and Respondent entered an Agreement that the Applicant would pay the Respondent Ksh. 500,000/ and would remain with the property in form of the

Western Technologies. The Respondent would relinquish ownership of the other properties.

8. The Applicant testified on 28th September, 2014 and confirmed the details in the supporting affidavit of the application. The Applicant produced the agreement PW Exhibit 3 and the original letter that the Respondent wrote to demand Ksh. 500,000/= in lieu of the ownership of other properties.
9. The Applicant paid the Respondent Ksh. 500,000/ as follows;

- (Exhibit 6) 1) Ksh.270, 000/= -Proved by annexure at page 37
- (Exhibit 7) 2) Ksh. 157,000/= -Proved by annexure at page 39
- (Exhibit 8) 3) Ksh. 80,000/= -Proved by annexure at page 42
- (Exhibit 9) 4) Ksh 65,000/= -proved by annexure at page 42

Some of the money was sent to the Account of Western Technologies which is shown by the Certificate of Registration- (Exhibit 5).

10 Despite the Application honouring the Agreement and paying Ksh. 500,000/= to the Respondent, in December, 2010, the Respondent returned to Kenya and went to National Bank of Kenya, Kisii Branch and took Title deed (Exh.9) which they had lodged to obtain a loan (exhibited in page 43 – 57 of the bundle) yet it was agreed the property would revert back in the Applicant.

11. The Applicant has always and continued to take care of the children of their marriage; the Applicant paid for J O O who resides

In the United States with the Applicant's Sister as shown in Exhibit 14, 15, 16, 17, 18, 19, 20, 21 and 22. N N O lives with the mother, the Respondent and the Applicant has sent money for his upkeep too as shown in Exhibit 23 and 24.

12. The Respondent has since remarried as explained in paragraph 50 of the supporting affidavit.

13. The Court finds that the union has lapsed 20 years on since the Applicant and Respondent separated. There is a valid Agreement of 4/8/2009 which the Applicant honored by making the agreed payments.

14. The Applicant has served the application with the leave of the Court through advertisement. The Respondent has not responded or filed any document in Court.

15. The Applicant demonstrates compliance in catering for the upkeep and education of the children of the union.

16. The Court finds that the Married Woman's Property Act is now repealed and under the Matrimonial Property Act, 2013, the Applicant be declared sole owner of; and in light of Mutual agreement of 4th August, 2008.

a) L. R. No. **[particulars withheld]**.

b) Plot No. **[particulars withheld]** (Trans Nzoia East District).

c) Residential Plot – No. **[particulars withheld]** in Milimani Estate, Kitale Municipality.

17. The Applicant to continue with the responsibility to provide for the children of the marriage especially education.

18. No orders as to costs.

DATED AND SIGNED AT NAIROBI THIS 10TH DAY OF OCTOBER , 2014

MARGARET MUIGAI

JUDGE