



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

PROBATE AND ADMINISTRATION DIVISION

CIVIL SUIT NO. 70 OF 2013 (O.S.)

IN THE MATTER OF DIVISION OF MATRIMONIAL PROPERTY

AND

IN THE MATTER OF SECTION 17 OF THE MARRIED WOMAN'S PROPERTY ACT 1882

N W MAPPLICANT

-versus-

K N M.....RESPONDENT

RULING

1. The originating Summons before me is dated 22nd October 2013 and is brought under **Section 17** of the **Married Women Property Act 1882** and **Section 3A** of the **Civil Procedure Act** and **Order 37 Rule 11 of the Civil Procedure rules**.)
2. The applicant prays for a declaration that the properties listed herein with all buildings and developments thereon acquired during the subsistence of their marriage and registered in the name of the respondent were acquired and developed by joint funds and efforts of the applicant and respondent during the subsistence of their marriage and are held in trust for the applicant.
 - a. L.R. NO. NGONG/NGONG/ *[particulars withheld]*
 - b. L.R. NO. NGONG/NGONG/ *[particulars withheld]*
 - c. L.R. NO. NGONG/NGONG/ *[particulars withheld]*
 - d. L.R. NO. NGONG/NGONG/ *[particulars withheld]*
3. The Applicant also seeks for a declaration that fifty per cent (50%) proportion of the aforesaid properties registered in the Respondent's name aforesaid, is held in trust and for the beneficial interest of the applicant and the aforesaid properties be equally shared (fifty per cent (50%) between the applicant and respondent.
4. She further seeks for a declaration that the joint ownership in respect of L.R. No. Ngong/Ngong/ *[particulars withheld]* be severed and that the same be held by the parties herein as tenants in

common and/or L.R. No.Ngong/Ngong/ *[particulars withheld]* be equally shared (fifty per cent (50%) between the Applicant and Respondent

5. There is evidence that the Applicant and Respondent were husband and wife having been married on 10th August 1984 at the Registrar of Marriage office at Nairobi. Annexed is “**NWMI**” a copy of the marriage certificate.
6. There is also evidence that the aforesaid properties were acquired/bought and developed during the subsistence of their marriage. **Article 45(3)** of the **Constitution** provides that:

“Parties to a marriage are entitled to equal rights at the time of marriage, during marriage and at the dissolution of the marriage.”

The **Matrimonial Property Act** (No. 49 of 2013) which provides for the rights and responsibilities of spouses in relation to matrimonial property, carries the following interpretation:

“‘Contribution’ means monetary and non-monetary contribution and includes-

- a. **Domestic work and management of the matrimonial home**
- b. **Child care**
- c. **Companionship**
- d. **Management of family business or property and farm work.”**

It therefore follows that this court must endeavour to give effect to both monetary and none monetary contributions, that both the Applicant and the Respondent made during the currency of the marriage to acquire the matrimonial property.

7. In the supporting affidavit that the Applicant swore on 22nd October 2013 she deponed that she and the Respondent were first married under Kikuyu Customary law in 1981 before they solemnized the marriage on 10th August 1984. That they were blessed with two issues of marriage who are both adults and that she is employed as a Human Resource Officer at *[particulars withheld]* while the Respondent is a retired lecturer and landlord.
8. The Applicant asserted that the aforesaid matrimonial properties were acquired/bought and developed with substantial effort and contribution from herself. She annexed “**NWM 2**”, copies of title deeds to the said property and “**NWM 3**”, receipts showing contributions to the acquisition of some of the properties. She averred that she also contributed to the marriage by giving birth and raising the issues of the marriage almost single handedly, since the Respondent did not take any responsibility in the raising and education of the children of the marriage at any stage from primary school to the University.
9. In the supporting affidavit the Applicant averred that she contributed to the construction of rental houses in the year 2000 on property No. L.R. *[particulars withheld]* and *[particulars withheld]* (originally No. *[Particulars withheld]*), but that the Respondent has at all times received 100% of all rental income therefrom. That the Respondent has used the said rental income for his own needs while the Applicant has never received a penny thereof. She has also annexed “**NWM 5**” which is a property known as L.R. No. Ngong/Ngong/ *[particulars withheld]* which is registered in their joint names.
10. The Respondent was served with the Originating Summons and with the hearing notice dated 19th September 2014. The affidavit of service of the Originating Summons sworn on 15th July 2014 and the affidavit of service of the hearing notice are on record. The Respondent neither entered an appearance nor filed a response. He also did not attend court on the date of hearing. The application is therefore uncontroverted.
11. The law on division of property is premised on **Section 17** of the **Matrimonial Property Act**

(No. 49 of 2013) which provides that a person may apply to a court for a declaration of rights to any property that is contested between that person and a spouse, or a former spouse of the person. The marriage herein was dissolved vide Divorce Cause No. 22 of 2013 on 13th August 2014.

12. For the foregoing reasons I make the following orders:

1. That the properties listed herein with all buildings and developments thereon acquired during the subsistence of their marriage and registered in the name of the respondent were acquired and developed by joint funds and efforts of the Applicant and Respondent during the subsistence of their marriage and are held in trust for the applicant.
2. That fifty per cent (50%) proportion of the aforesaid properties registered in the Respondent's name aforesaid, is held in trust and for the beneficial interest of the Applicant and the aforesaid properties be equally shared (fifty per cent (50%) between the Applicant and Respondent.
3. That the joint ownership in respect of L.R. No. Ngong/Ngong/ *[particulars withheld]* be severed and that the same be held by the parties herein as tenants in common and/or L.R. No. Ngong/Ngong/ *[particulars withheld]* be equally shared (fifty per cent (50%) between the Applicant and Respondent.

SIGNED DATED and **DELIVERED** in open court this **6th day of November 2014.**

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L. A. ACHODE

JUDGE