

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT 2562 OF 1994

EUNICE M. KYALO PLAINTIFF

VERSUS

COSMAS K. MUTHEMBWA DEFENDANT

R U L I N G

On 25th November, 2011, the Hon. Justice Mugo delivered a ruling in this matter meant to give effect to the decree of this court made on 2nd July, 1999 and the Court of Appeal judgment in C.A No. 74 of 2001 delivered on 19th April, 2002 wherein the Applicant was awarded 50% share in the properties the subject matter of the suit.

The parties have failed to agree on the correct version of the order to be extracted from that ruling.

I have carefully read the ruling of Hon. Mugo J and considered the two versions of the orders proposed by the parties, I have come to the conclusion that the correct order from the said ruling should be as follows:-

- (1) THAT the parties do proceed to agree on the appointment of a mutually acceptable valuer within the next 15 days, who will undertake valuation of the properties specified in this application and to file appropriate valuation reports in court within 45 days of this order.***
- (2) THAT the Valuer's terms of reference be drawn jointly by Counsel with special note being taken of Order 2 of the decree which is relevant because the Respondent has been utilizing the applicant's share of the property since cohabitation ceased in December 1992 and he owes her 50% of the income he has made to her exclusion while any liabilities remain his responsibility.***
- (3) THAT once the Valuations are filed parties do mention the matter before the Deputy Registrar, Commercial Division for further orders.***
- (4) THAT in the event the parties are unable to agree on a Valuer, the Deputy Registrar do proceed to appoint one and to draw his terms of reference in accordance with the judgment of the High Court as varied by the Court of Appeal.***
- (5) THAT costs of this application be in the cause.***

Order number two is deliberately explanatory for the reason that, that explanation has an effect on the valuation and end result thereof. That was the intention of the court and I hereby give effect to its intention.

Orders accordingly.

DATED and Delivered at Nairobi this 13th day of July, 2012.

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A. MABEYA
JUDGE