



C.J.K.....PLAINTIFF

VERSUS

S.O.O.....DEFENDANT

### JUDGMENT

(1) The Plaintiff filed an Originating Summons (O.S.) dated 3<sup>rd</sup> September 2010 under the section 17 of the Married Women Property Act 1882 seeking a determination of her property rights in properties acquired and developed during her marriage with the Respondent. Although the Originating Summons referred to three properties being Plot MN[...] and two parcels of land at Muhoroni and Asembo, Rarieda District, the evidence presented before the court on viva voce hearing related to the Mombasa property only.

(2) Although the Respondent was represented by an advocate, he did not file any replying affidavits, despite opportunity to do so severally granted by the court, or attend court to give oral evidence.

(3) The Plaintiff testified that she married the Respondent on 30<sup>th</sup> December 1999 and they had one issue of the marriage, B.O.O, and were separated on 22<sup>nd</sup> December 2008 when the Respondent moved out of the matrimonial home leaving the Plaintiff with the child of the marriage. The parties lived separately since 22<sup>nd</sup> December 2008 and there was at the time of the hearing a pending divorce petition in **Mombasa Chief Magistrate's Court No. 6 of 2010, C.J v. S.O.O**

During the existence of the marriage the parties had Plot of land No. [PARTICULARS WITHHELD] transferred and registered in their joint names. The Plaintiff meticulously adduced evidence supported by documentary proof on how she paid for the purchase price of Kshs.600,000/= by way of loans from her father and her Savings and Credit Co-operative Society and thereafter developed the plot using a loan from Kenya Commercial Bank's Savings and Loans for Kshs.4,000,000/= which despite supplementary capital from sale of her two other plots had not completed the house construction on the plot. She testified that the Respondent did not make any financial contribution to the acquisition of the plot of the subsequent development as he was unemployed at the time between 2002 and 2008 and even at the time of the hearing. I was impressed by the meticulous detail of the Plaintiff's testimony and I found her to be truthful.

(4) The Plaintiff's counsel, Mrs. Okata filed written submissions and, in thanking her for her able submissions, I find that the matter for determination which is governed by authority is whether and to what extent the parties are entitled to the suit property MN/1/10827 [...], Mombasa which is registered in their joint names. Having adduced no evidence relating to the other two properties registered in the names of the Respondent at Muhoroni and Asembo, Rarieda, the Plaintiff is deemed to have abandoned her claim to share in these properties. In the end the Plaintiff's prayer was that **"the property MN[...] be declared to belong to her and the Respondent's name to be struck out of the register of the property."**

(5) So far as material to the present proceedings, there are three legal principles to be discerned from the

leading 5-judge bench decision of the **Court of Appeal in Peter Mburu Echaria v. Priscilla Njeri Echaria , Civil Appeal No. 75 of 2001**, namely:

(a) A joint tenancy connotes equality for there is a rebuttable presumption that where two or more people contribute the purchase price of property in equal shares they are in equity joint tenants. The equal contribution results in a joint tenancy unless there is contrary evidence to show that irrespective of the registration there was no equal contribution (pp. 17-18).

(b) The state of the Law on contribution in Kenya requires a spouse to demonstrate financial contribution to entitle him or her to a share in property acquired during marriage (pp.25-26) and

(d) The court has jurisdiction after the adjudication of the dispute to allocate shares of the disputed property as it may deem just and order the transfer of the share to the rightful beneficial owner to give effect to its decision (p.36). See also **Jacobus Petrus Nicholas Van Der Goes v. Agnes Nanjala William HCCC MSA 194 of 2008 (O.S)** applying to principle to sever a joint tenancy.

(6) In the absence of any evidence on the part of the Respondent and noting the credible evidence of the Plaintiff, I find that the Plaintiff contributed to the acquisition and development of the suit property LR MN[...] at 100% and that the Respondent did not make any financial contribution. There was also no evidence of any other form of contribution by the Respondent albeit indirect.

(7) Accordingly, I find that the presumption of joint tenancy of the suit property by the joint registration has been rebutted by the Plaintiff's evidence of non-contribution of the Respondent and the Plaintiff is therefore entitled to the suit property MN[...] in its entirety. Accordingly, the Plaintiff is entitled to an order of the transfer of the Respondent's share to herself in order to give effect to the finding of her 100% contribution to the acquisition and development of the suit property.

(8) For the foregoing reasons, I make the following orders:

(a) A declaration as prayed in prayer 3 of the Originating summons that the Respondent's share in Plot No. MN[...] is held upon trust for the Plaintiff who contributed to the acquisition and the development of the property at 100%.

(b) An order as prayed in prayer 8 of the Originating Summons that the respondent do execute all documents necessary to transfer the Respondent's interest in the suit property MN/1/10827 to the Plaintiff within 14 days and in default the same be executed by the Deputy Registrar of the High Court.

(c) The Respondent will pay to the Plaintiff the costs of the Originating Summons.

**Dated and delivered on this 6<sup>th</sup> day of September 2012.**

**EDWARD M. MURIITHI**

**JUDGE**

In the presence of:

Mrs. Okata for the Plaintiff

No appearance for the Defendant

Miss Linda - Court Clerk