



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Divorce Cause 2 of 2006

IN THE MATTER OF AFRICAN CHRISTIAN MARRIAGE AND DIVORCE ACT CAP 151 OF

THE LAWS OF KENYA

AND

IN THE MATTER OF THE MATRIMONIAL CAUSES ACT 152 OF THE LAWS OF KENYA

GWK.....PETITIONER

VERSUS

JEGW.....RESPONDENT

RULING

The Judgment in this file i.e Divorce Cause No.[PARTICULARS WITHHELD] between the parties herein was rendered by the **Honourable Justice Khaminwa** on 9/7/2007. She dissolved the marriage between the parties herein, handled the custody issues but ordered that either party may make an application within 30 days thereof for the distribution of the matrimonial property. Counsel for JEGW – the Respondent in the Divorce cause - Joe Kathungu and Co. Advocates filed the application dated 14/9/2007. The parties nonetheless thereafter

reached a consent on all the issues raised in that application save for the value of **Plot No.***[Particulars Withheld]* on which stands the matrimonial house. The parties also agreed to apportionment of 50:50 of the matrimonial property in question. I say they agreed because the petitioner agreed on 50:50 but the Respondent said 20:80 or 50:50. So in my view, the property should be shared on 50:50 basis. The matter went to hearing but the parties could not agree on the value of the property in question. Each party engaged a valuer. They both visited the site on separate occasions and compiled reports.

Upcountry valuers who were instructed by JE gave the land in question together with the developments a value of Ksh.6,000,000. Shelter valuers who were contracted by GW arrived at a composite value of 2.3 million. Both valuers were called to court to be cross-examined on their valuation but each justified his figures. At the end of the day we were left with this huge variance which could not be explained. Both counsel in their written submissions asked the court to appoint an independent valuer but this in my considered view may not solve the problem given that whichever party who is not satisfied with that valuation could challenge the same and we would be back to square one.

I have carefully gone through the 2 reports. I have observed that the report by upcountry valuers was certainly more detailed and the attached photographs have assisted me immensely in arriving at my decision. Even with my limited knowledge in valuation matter, I can with certainty say that the house in question has a value much higher than the 1.5 m. given to it by shelter valuers. They grossly undervalued the same. What the Respondent may not have realized is that the said valuation would work against him because the court can easily accept that value and order that the property be left to the petitioner who should refund the 50% of the assigned value to the Respondent. He would then not be heard to complain that it was undervalued.

After considering the valuation reports and the able submissions by both counsel, I have come to the conclusion that the 2.3 m is a gross undervaluation. The 6 million would be on the higher side given the area and the topography. Justice demands that the court arrives at a figure in between the 2 valuations. In my considered view a balance or a near average of the 2 valuations would be fair and just. I will therefore add up the 2 values- which amounts to 8.3 million, round it off to 8 million which will give us an average of 4 million. This formula is guided purely by solomonic law and has nothing to do with the law in our statutes.

I therefore value the property at Ksh. 4 million – with the apportionment of 50:50 to each party. The Respondent who is said to be living on the property with the so called 2nd wife will therefore pay Ksh.2 million to the petitioner if he wants to remain on the said property. The payment must be made within the next 120 days from the date hereof failing which the petitioner will have the option to pay the 2 million to the former husband if she wants to take the home. If neither of this is possible, then the property will be advertised and sold in the open market by a property agent to be identified by counsel for both parties and the proceeds therefore be shared equally between the two parties.

Each party will bear the costs of this application.

W. KARANJA

JUDGE

Delivered, signed and dated at Embu this 3rd day of Nov 2009.

In presence of:-Mr.Kathungu for Applicant present

Igati Mwai for Chomba for Respondent present

Petitioner/applicant present.