

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 262 OF 2017

L I O.....APPLICANT

VERSUS

A O O.....RESPONDENT

RULING

This is an originating summons which is issued upon the application of L I Mo who claims to have acquired title to the whole of those parcels of land known as (1) South [particulars withheld] and (2) [particulars withheld] by registration having been so acquired during the failed marriage between the parties here to and for determination of and/or for orders on the following issues:-

1. Whether the applicant L I O should be declared to have, in her own capacity, acquired title to the whole of those parcels of land known as (1) South [particulars withheld] and (2) [particulars withheld] by virtue of acquisition and registration in her own names pursuant to the provisions of the Married Women's Property Act, 1882.
2. Whether the Respondent should be restrained by the order of this court from dealing in, possessing, disposing, wasting and/or in any manner transacting over the said parcel of land.
3. WHETHER THE Respondent should be ordered removed from property number [particulars withheld].
4. Whether the Respondent should be condemned in the costs of this suit.

The plaintiff submitted that the suit against the defendant by way of originating summons seeking a determination that she acquired the titles of the properties number [particulars withheld] and [particulars withheld] and also a determination whether the defendant should be evicted from [particulars withheld]. It was the plaintiff's evidence that she was married to the defendant way back in 1983. She stated that at that time the defendant was not employed. She was the sole breadwinner of the family and that although she did not have children of her own, she put up with the defendant's children from a previous marriage.

In the year 2010 their marriage broke down and they got divorced. During the subsistence of the marriage, the plaintiff managed to purchase two parcels of land; [particulars withheld] and [particulars withheld] through a loan advanced to her by her employer. Both parcels of land were developed by her. She produced to evidence the copies of sale agreements and title deeds to support her claim. She also called PW2 to support her claim. She explained that upon dissolution of their marriage, she was chased out of her home in [particulars withheld].

During cross examination she confirmed that she sold property number [particulars withheld] as she had been taken ill and needed money to take care of her medical bills. She confirmed that she was the one who bought and developed both plots.

The Defendant on his part stated that he was the one who bought the properties. He stated that he paid Kshs 40,000/ for [particulars withheld]. He did not produce any documentation to show that. He stated that he had all the properties registered in the plaintiff's name as gifts to her because she could not bear children and he was to give her an assurance of his love. The same was deponed in his affidavit in response to the application. He also stated that he had another parcel of land that he had inherited from his father. He however stated that he decided not to live there rather he stayed in the matrimonial home.

This court has perused the court file. The suit against the defendant by way of originating summons seeking a determination that she acquired the titles of the properties number [particulars withheld] and [particulars withheld] and also a determination whether the defendant should be evicted from [particulars withheld]. The matter was brought under the Married Women's Property Act. The property in question appears to be matrimonial property. I find that this court has no jurisdiction to handle the matter. I therefore set aside the proceedings in this matter and transfer the matter to the High Court Kakamega for directions.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 28TH DAY OF JUNE 2018.

N.A. MATHEKA

JUDGE