



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC NO. 1320 OF 2015 (OS)

M J J.....APPLICANT

=VERSUS=

G O E.....RESPONDENT

JUDGEMENT

Introduction

1. The Plaintiff/Applicant was first brought to Kenya in 1969 by her parents who were working in Kenya. The plaintiff left Kenya in 1991 but came back in 2004 to work with [particulars withheld]. Because the plaintiff had spent her childhood in Kenya, she thought of having a house in Kenya. She looked for money and settled for a house in Karen which was purchased in her name and that of the defendant on 19th April 2006. On 27th May 2006, the plaintiff and the defendant solemnized their marriage at St Jude's Chapel of the Holy Family, at Boulder City of the state of Nevada in the United States of America. The marriage between the plaintiff and the defendant was dissolved through a decree of absolute divorce given on 23rd November 2011.

2. By an amended originating summons dated 13th March 2017 and filed in court on 15th March 2017, the plaintiff sought the following reliefs:-

1. That this Honourable court be pleased to issue orders declaring that the respondent G O E holds the half share in all that residential property known as land Ref. No [...] in trust of the Applicant herein.

2. That this honourable Court be pleased to make orders of declaring beneficial interest of the Applicant in all that residential property known as land Ref. No [...].

3. That this Honourable Court be pleased to order that the title in respect of property land Ref. No [...] be cancelled and a new one issued in the Applicant solely.

4. That this Honourable Court in the alternative be pleased to order that the said property be sold to defray all liabilities with respect to the same and the net proceeds be allocated to the Applicant herein.

5. That this Honourable Court be pleased to make such orders of declaration and/or beneficial interest to meet the ends of justice.

6. That this Honourable Court be pleased to make such orders as regards all necessary and consequential accounts, inquiries and directions.

7. That costs of this Application be provided for.

3. The defendant who was served through advertisement in the Daily Nation Newspaper of 20th March 2017 neither entered appearance nor filed defence. The hearing therefore proceeded by way of formal proof.

Plaintiff's Case.

4. The Plaintiff testified that she met the defendant who told her that it was not possible for a foreigner to be registered as owner of a property. The Plaintiff was therefore convinced to bring the defendant on board with the hope that they were to marry later and that the

defendant would contribute to the repayment of the monies she had spent in purchasing the Karen property. The Plaintiff raised money on her own. The plaintiff had a mortgage for her house in Washington which was consolidated with the Karen house. She is still repaying the mortgage in Washington.

5. During their divorce, the Karen property was excluded from the divorce settlement as it was purchased before the plaintiff and the defendant were formally married. The plaintiff stated that she has incurred money in renovating the house at Karen.

Analysis of evidence.

6. I have looked at the documents filed by the plaintiff. The bank statements show that the plaintiff obtained loans amounting to 205,000 US Dollars in 2005. There is also evidence from the statements that the plaintiff wired a total of 230,550 US Dollars to Nairobi in 2005. This is part of the money which was utilized to purchase the Karen property. There is no evidence to show that there was any contribution by the defendant. When the plaintiff lost her job, she had to consolidate the mortgage in Washington and her other resources to enable her afford repayment of the mortgage. Again there is no evidence that the defendant contributed towards the repayment of the mortgage.

7. Evidence on record shows that the Karen property was transferred into the names of the plaintiff and the defendant on 19th April 2006. In the following month, the plaintiff and the defendant solemnized their marriage in church on 27th May 2006 in Nevada State in the United States of America. The plaintiff's evidence is that she was duped into entering the union by the defendant who convinced her that a foreigner could not be registered as owner of the property without the name of a local. Five years after the solemnization of the marriage, the defendant sought for divorce which was granted on 23rd November 2011. It is the evidence of the plaintiff that the house at Karen was excluded from the divorce settlement as it was purchased solely using her money. The defendant never contributed anything towards its purchase or its renovation. The plaintiff has spent quite a substantial amount in repairs as per the receipts filed in this suit. The evidence of the plaintiff is uncontroverted.

Conclusion.

8. I am convinced that the defendant did not contribute anything towards the purchase or maintenance of the Karen house. In any case the Karen house was excluded from the divorce settlement as per the plaintiff's evidence. There is therefore no reason why the name of the defendant should remain on the title to the property. I find that the plaintiff has proved her case on a balance of probabilities. I therefore enter Judgement in favour of the plaintiff as follows:-

1. A declaration that the defendant G O E does not hold any interest in all that property known as land Reference No.[...].

2. A declaration that the plaintiff M J J is the absolute owner of all that property known as land Reference No.[...].[...].3589/67 in the name of M J J and G O E and issuing a new one in the name of M J J.

4. The costs of this suit shall be borne by the defendant/respondent.

Dated, signed and delivered at Nairobi on this 20th day of September 2018.

E.OBAGA

JUDGE

In the presence of :

Mr Beyo for Mr Kabiru for Plaintiff

Hilda: Court Assistant

E.OBAGA

JUDGE