



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

E&L CASE NO. 347 OF 2016

L N M.....PLAINTIFF

VERSUS

I M K.....DEFENDANT

JUDGMENT

By a plaint dated 14th November 2016 the plaintiff herein sued the defendant for an order of a permanent injunction to restrain the defendant his agents or servants or children from trespassing, interfering or doing anything within her premises that would compromise her peace.

The defendant was served with summons to enter appearance but never filed any response to the suit. The matter therefore proceeded by way of formal proof. The plaintiff gave evidence and stated that she got married to the defendant in 1959 but separated in 2012 when the defendant took the title to the suit land.

She stated that she had filed a suit in the Chief Magistrate's court being CMCC No. 969/12 where the court granted her a decree for a permanent injunction. She produced the decree as exhibit No. 1. She had also filed another suit against the defendant being CMCC No. 302 of 2015 seeking for an amount of Kshs. 115,000 being the value of the plaintiff's animals that were sold by the defendant.

The plaintiff testified that she has not filed any divorce cause in court and that they stay with the defendant but in separate rooms. She also stated that the defendant has threatened to evict her from where she lives. She therefore prayed that that the suit land be divided into two equal portions between her and the defendant.

Counsel for the plaintiff filed written submissions on behalf of the plaintiff and reiterated her evidence. Counsel relied on the Matrimonial Property Act and more specifically section 2 of the Act to state the definition of contribution to be both monetary and non – monetary. He also submitted that the plaintiff is the lawful wife of the defendant herein.

Mr. Chemwok cited cases that are related to distribution of matrimonial property in his submissions. He further stated that the plaintiff and the defendant had irreconcilable differences and that the suit land should be split into two.

Analysis and determination

I wish to state from the plaint, the evidence and submission of Counsel before the court, that it is obvious that the court is being asked to deal with division of matrimonial property. The court is being asked to split the suit land into two between the plaintiff and defendant who are husband and wife who are still living in the same roof but different rooms due to their irreconcilable differences. The plaintiff and the

defendant have not yet divorced as husband and wife. There is no decree absolute to dissolve their marriage.

From the pleadings and the evidence, the plaintiff had filed a similar case for injunction vide Eldoret CMCC No.969 of 2012 where she was granted an order of injunction. I do not understand why she has filed another suit seeking for similar orders and yet she has a decree to that effect. I also notice that she had also sued the defendant in CMCC No. 302 of 2015 seeking for some amount of money being the value of the animals that the defendant sold without her consent.

I find that this case does not belong to this court in the first place. This court cannot deal with division of matrimonial property so to speak. The other issue is that it had earlier been adjudicated upon by a competent court on the issue of injunction.

I will not belabor much on the merits of the case as I do not have jurisdiction to here and determine this case. The parties are also still living together as husband and wife as there has been no divorce. I had drawn the attention of the lawyer on the issue but he did not pick it. The upshot is that this case is dismissed with no orders as to costs.

Dated and delivered at Eldoret on this 20th day of December, 2017.

M.A ODENY

JUDGE

Judgment read in the presence of:

Mr. Chemwok for Plaintiff

Mr. Koech - Court Assistant

Defendant – absent.