



REPUBLIC OF KENYA



KENYA LAW
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**FKM v MAKK (Matrimonial Cause E003 of 2023)
[2024] KEHC 537 (KLR) (31 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 537 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
MATRIMONIAL CAUSE E003 OF 2023**

FR OLEL, J

JANUARY 31, 2024

BETWEEN

FKM APPLICANT

AND

MAKK RESPONDENT

JUDGMENT

1. This suit was instituted through the originating summons dated 9th March 2023 in which the Applicant seeks for the following orders;
 - a. A declaration that title Number Machakos town block x/xxxx registered in the joint names of the Applicant and the respondent is not Matrimonial Property having been purchased through a bank loan solely serviced by the Applicant.
 - b. A declaration that title number Juja/Juja East Block x/xxxx registered in the name of the Applicant is Not Matrimonial Property being a gift to the Applicant from the Applicants father.
 - c. A declaration that the respondent having unlawfully sold and transferred matrimonial property namely title numbers Subuk/Komarock block x/xxxx and xxxx. The Respondent has no right to share properties acquired solely by the Applicant and/or gifted to the Applicant by his parents.
 - d. An order directing the District lands Registrar Machakos to forthwith remove the name of the Respondent MKK as co registered owner of the title Number Machakos town block x/xxx.
 - e. Costs of this summons be provided for.



2. The Respondent did not enter appearance and/or file her Response to this originating summons, though served with summons to enter appearance and hearing notice to attend court when the matter was scheduled for hearing. In essence this suit was undefended and proceeded *ex parte*.
3. The applicant testified that that he got married to the respondent on 21st November 1998 at Redeemed Gospel church (CVT) charter hall, Nairobi and eventually in 2020, the respondent did file Mavoko Divorce Cause No 14/2020 which was finalized by a judgement dated 27th July 2021 dissolving the said marriage. The applicant further averred that during the subsistence of the marriage he acquired two properties namely;
 - a. Title No Machakos town Block x/xxxx registered in their joint names; and
 - b. L.R. No Juja/Juja East Block x/xxx registered in his name, and this was a gift given to him by his father.
4. Further it was the applicant's evidence that during subsistence of the marriage, the respondent did acquire two properties being Subuk/Komarock block x/xxxx and xxxx, which she sold off secretly without the requisite spousal consent and utilized the sale proceeded by herself. Property known as Machakos town Block x/xxxx was purchased by a bank loan of Kshs.1,203,000/= acquired from standard chartered Bank, which loan he was servicing at Kshs. 29,190.74/= being deducted monthly from his salary at Daystar University where he worked.
5. Finally, as regards property known as Juja/Juja East Block x/xxx, the applicant stated that the same was bought by his father PMM way back as a share from Kiganjo location ranching company. Later he was gifted the said property by his father and had it transferred to his name after all his family members and siblings gave consent for the same. The applicant did produce all his supporting documents as exhibits and prayed that this suit be allowed.

Determination.

6. This suit was not defended and the facts herein are not controverted and thus stand proven. Section 7 of the *Matrimonial Properties Act* does provide that;

“Subject to section 6(3), ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition and shall be sub divided between the spouses if they divorce or their marriage is otherwise dissolved.”
7. The applicant has proved by the evidence produced that title No Juja/Juja East Block x/xxx was initially his father's property, being a share acquired from Kiganjo location Ranching company and was subsequently transferred to him, with the consent and knowledge of all his siblings. There is no evidence placed before court to show that the respondent has in any way contributed to the development of this property and therefore has no equitable interest therein.
8. With regard to the property known as Machakos town Block x/xxxx it was proved that indeed the applicant took a loan of Kshs 1,203,000/= from standard chartered Bank to purchase the said property and was being deducted Kshs 29,190.74/= monthly from his salary at Daystar university to settle the said loan. The entire purchase price of this property was paid by his sole efforts without any contribution from the Respondent hence he is justified to have the said property registered in his sole name.
9. As regards properties Subuk/Komarock block x/xxxx and xxxx, the same were bought by the Respondent during subsistence of the marriage and subsequently disposed off by her. Making any declaration



regarding the same herein will real be of use as the applicant doesn't seek an interest in the said properties.

Disposition

10. The applicant claim therefore succeeds and judgment is entered in his favour as follows;
 - a). A declaration be and is hereby issued that title Number Machakos town block x/xxxx registered in the joint names of the Applicant and the respondent Is Not Matrimonial Property having been purchased through a bank loan solely serviced by the Applicant.
 - b). A declaration be and is hereby issued that title number Juja/Juja East Block x/xxx registered in the name of the Applicant is Not Matrimonial Property as it was a gift to the Applicant from his father.
 - c). A mandatory order be and is hereby issued directing the county lands Registrar Machakos to forthwith remove the name of the Respondent MAKK as co registered owner of the title Number Machakos town block x/xxxx and the same be retained in the name of the applicant Francis Karanja Mwangi.
 - d). Each party shall bear their own costs of this suit.
11. It is so ordered.

JUDGEMENT WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 31ST DAY OF JANAURY, 2024.

FRANCIS RAYOLA OLEL

JUDGE

Delivered on the virtual platform, Teams this 31st day of January, 2024.

In the presence of;

Mr. Njogu for Applicant

No appearance for Respondent

Sam - Court Assistant

