



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 33 OF 2014

RWN.....PETITIONER/RESPONDENT

VERSUS

NKM.....RESPONDENT/APPLICANT

RULING

1. In a judgment dated 27th of July 2018 Musyoka J dissolved the marriage between the parties herein and went ahead to distribute matrimonial properties in the following term:

“That matrimonial properties shall be shared out as per the terms of the agreement dated 24th February, 2014 so that

i. The Petitioner shall have plot numbers [xxxx]

and

ii. The Respondent shall have plots numbers [xxxx].”

2. In his judgment the learned Judge appreciated that some properties were acquired before marriage and some during coverture and the fact that the parties had agreed on distribution which agreement he relied upon.

3. In the agreement the parties were to divide the properties as follows; the wife-RWN –properties [xxxx]. Husband - NKM properties [xxxx]. R was to refund N Kshs.200,000 to compensate for electrical wiring by the end of April 2014 and N was to vacate buildings that were allocated to R.

4. By an application dated 20th August 2018 the Applicant seeks for review of the judgment herein citing an error apparent on the face of the record as the learned Judge having relied on the agreement between the parties went ahead to allocate property B/14 to the wife and failed to direct refund of Kshs.200,000/= to the husband/applicant as per the agreement.

5. The application is opposed on the basis that the Applicant’s only recourse is an appeal as no grounds for review have been brought forward.

6. Having considered the application, the response and submissions made by counsel on record I am of the opinion that the learned Judge clearly and more than once indicated in his judgment that he would rely on the agreement by the parties in distributing properties.

Secondly it is clear that in the final analysis property B14 which was to go to the Applicant in the agreement s reflected

alongside other properties that were to go to Rose and the refund of Kshs.200,000/= was not mentioned.

7. In my view there are obvious errors apparent on the face of the record and good enough reason for this court to review the judgment in order to put effect to the letter and spirit of the agreement by the parties dated 24th December, 2014 and which Musyoka J intended to adopt.

8. Consequently therefore the judgment dated 27th July, 2018 is reviewed to the extent that matrimonial properties will be divided as follows:

i. RWN to get plots Nos. [xxxx].

ii. NKM to get Plots Nos. [xxxx].

iii. R to pay N Kshs.200,000/= as a refund for wiring.

iv. N to vacate all properties allocated to R.

v. Lastly, each party to henceforth collect rent if any payable in their respective properties.

9. Each party to bear his/her on costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16th DAY OF JANUARY, 2020.

ALI-ARONI

JUDGE

In the presence of:

Petitioner

Respondent.....



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