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28 JUN 2016
CONSTITUTIONAL &
HUMAN RIGHTS DIVISION

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL & HUMAN RIGHTS DIVISION
NAIROBI PETITION NO. 164 OF 2016

FEDERATION OF WOMEN LAWYERS KENYA (FIDA-K)PETITIONER

VS.

THE ATTORNEY GENERALRESPONDENT

THE RESPONDENT'S GROUNDS OF OPPOSITION TO PETITION

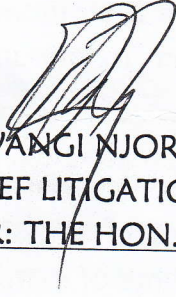
TAKE NOTICE THAT at the hearing of the Petitioner's Petition dated 20th April, 2016 Respondent shall oppose the same and seek to have it dismissed on the following grounds:

1. The petitioner has not demonstrated that Section 7 of the Matrimonial Property Act 2013 (MPA) is unconstitutional yet all legislation is presumed to be constitutional.
2. Section 7 of the Matrimonial Property Act 2013 does not contravene **Article 45(3) of the Constitution** in that it does not at all lessen, in respect of any of the parties, the requirement that parties shall have equal rights at the time of marriage, during marriage and at the dissolution of marriage.
3. That it is only fair and just that ownership of matrimonial property vests in the spouses only according to the contribution of either spouse towards its acquisition.
4. The meaning of "*contribution*" has been given in the Matrimonial Property Act.
5. Section 7 of the Matrimonial Property Act 2013 does not infringe on the rights of women to own property after the dissolution of marriage.
6. Section 7 of the Matrimonial Property Act 2013 does not lead to any injustice to any of the parties upon dissolution of the marriage.

7. The Respondent has not failed and/or neglected to give advice as insinuated or at all on the alleged unconstitutionality of Section 7 of the MPA for the reason that the said section is not unconstitutional.
8. Legislation is a process involving many stages and much consensus building and the remedy of mandamus sought by the petitioner is unsuitable in the circumstances.
9. The role of the Court is to interpret and that the doctrine of separation of powers quite prevents the Court from amending the law.
10. The petition is frivolous and lacks merit.

REASONS WHEREFORE the respondent prays that the petition be dismissed with costs.

DATED at NAIROBI this 17th day of JUNE 2016.


MWANGI NJOROGE
CHIEF LITIGATION COUNSEL
FOR: THE HON. ATTORNEY-GENERAL

Drawn & Filed By:

The Hon. Attorney-General Attorney-General's Chambers State Law Office, Harambee Avenue P.O. Box 40112-00100 Nairobi. (AG/CPT/MJ 117/16)

TO BE SERVED UPON:

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