



**CAO v MEO (Family Originating Summons 6 of 2019)
[2024] KEHC 17008 (KLR) (23 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 17008 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
FAMILY ORIGINATING SUMMONS 6 OF 2019**

**G MUTAI, J
AUGUST 23, 2024**

BETWEEN

CAO CLAIMANT

AND

MEO RESPONDENT

JUDGMENT

1. Before this court is Originating Summons dated 10th April 2019 and amended on 3rd August 2020, through which the Claimant seeks the following orders:
 - a. That it be declared that LR No. 11XX (Original No. 18XXXX) Section I Mainland North Nyali (CR No. 3XXX) is the matrimonial home registered in the name of the Respondent and is owned jointly by the Applicant and the Respondent;
 - b. That a declaration do issue that the movable and immovable matrimonial properties known as:-
 - i. LR No 23XXXX (IR No 7XXXX) Nairobi, in Jacaranda Estate, with a three-bedroomed house for rent;
 - ii. LR No 11XXXX (Original No 18XXXX), Section XX Mainland North Nyali (CR No 32XXXX), along Beach Road, Nyali, Mombasa County;
 - iii. LR No 7XXXX (Original No 14XXXX), Section XX Mainland North, Mombasa Kiembeni with a bungalow three-bedroomed house;
 - iv. Plot No 1XXXX Shauri Yako, Muhoroni, with three units of one-bedroom houses for rent;



- v. Plot No 1XXXXX Shauri Yako, Muhoroni, with three units of one-bedroom houses for rent;
 - vi. Motor vehicle KBC XXXJ station wagon, chassis no vXXXXX;
 - vii. Motor vehicle KBE XXXU station wagon chassis number V7XXXX;
 - viii. Motor vehicle KBR 1XXXXC station wagon chassis no WHNYXXXX;
 - ix. Motor vehicle KBN XXXT station wagon chassis no NCPXXXX;
 - x. 550 shares in Seashore Shipping Services Limited;
 - xi. Shares in Freightworks Logistics Limited;
 - xii. Motor vehicle KBB XXXD station wagon chassis no NCXXXX;
 - xiii. Motor vehicle KBR XXXY station wagon chassis no VYXXXX;
 - xiv. Ploughing tractor KTCA XXXA
 - xv. Second ploughing tractor;
 - xvi. Matrimonial home in the ancestral home in Koru;
 - xvii. Family saloon business in Muhoroni;
 - xviii. Television set, hi-fi set with large speakers, Star Times decoder in the Koru home;
 - xix. Television set;
 - xx. Refrigerator are legally owned jointly by the Applicant and the Respondent (hereinafter referred to as “the said properties”);
- c. That a declaration to issue that the Respondent holds the said properties named in paragraphs 1 and 2 above in trust for the Applicant and for himself too;
 - d. That this honourable court be pleased to issue a declaration that the said properties mentioned above are jointly owned by the parties herein and the same should be valued, sold and/or divided and/or the income derived from the rent/sale be shared equally between the Petitioner and the Respondent as this honourable court deems fit and just;
 - e. That further in the alternative and in the event that title and ownership in any of the said properties has/have already been transferred in favour of 3rd parties an order that the respondent does account for the proceeds and the same be divided equally between the Applicant and the Respondent;
 - f. That the Applicant be allowed and given the first priority to buy out the Respondent’s share in the matrimonial property named in paragraph 1 above and own and manage the matrimonial property named in paragraph 1 above, absolutely and or exclusively without the Respondent’s interference.
 - g. That the Respondent himself, his agent and/or his agent be restrained from alienating, encumbering, or in any manner disposing of the said matrimonial properties without the express written consent of the applicant; and
 - h. That the Respondent be condemned to pay the costs of this application and other costs incidental thereto.



2. In the amended Originating Summons, the Claimant listed all the items she claimed were jointly owned matrimonial properties. In the prayers I have reproduced above, I have not listed the items that were agreed upon by consent during the hearing as belonging to both parties equally.
3. The summons is premised on the grounds and the supporting affidavit of Caroline Awuor Odhuno, the Claimant herein. The Claimant stated that she married the Respondent on 7th August 1993 at St Stephen's Church in Kisumu. The Respondent had a Simba built by his parents in Koru, which became their home. She bought household items for their new house in Nairobi before the wedding, which included an oven cooker, a gas cylinder, a bed and curtains. When the Respondent was jobless after they got married, she took care of the household expenses, which included grocery shopping, paying househelp, cooking gas refill, replacing light bulbs, paying for his public transport costs, monthly prenatal clinics and pre-natal care needs. After he got employed the Respondent was always away from home due to work related travels as a result of which he took full charge of the family, by taking care of the children, buying food and household items, taking children to hospital, maintaining the car, sourcing and managing the house help and ensuring security and safety of the family.
4. The Claimant averred that she worked as a teacher employed by the Teachers Service Commission and engaged in business. She used her salary and the income from her business to take care of the family expenses.
5. She stated that she is the one who identified the property in Kiembeni, for which the sale agreement was signed on 22nd December 1999, and payment was completed by March 2000. She averred that she purchased the property with a loan from Mwalimu SACCO and her salary, which she paid in six instalments to the agent's lawyer, Sachdeva and Company Advocates. She supervised 90% of the construction of the house to completion, as the Respondent was travelling out of the country a lot due to the demands of his job.
6. On LR No.23XXX (IR No 7XXX), the Jacaranda Estate property, she said they purchased the same at Kes.3,000,000/- in 2005. The Respondent's brother, Amos, was the one managing the property and collecting rent, which he was not remitting, and as a result, she took over the management with the tenant then paying Kes.20,000/- per month.
7. Regarding LR.No.1XXX (Original No.18XXX) Section I Mainland North Nyali (CR No.3XXX), the Claimant stated that she is the one who did the search and agreed with the Respondent to purchase the said plot, which they did at Kes.3,040,000/-. She averred that prior to the divorce, she had done renovations in the said house whose costs amounted to Kes.300,000/-.
8. She stated that Plot XXX Shauri Yako was purchased at Kes.12,500/- and that her mother-in-law lives there to date. During the course of the construction, she and the Respondent would go to inspect the construction project together with her mother-in-law's farm manager.
9. The Claimant stated that the construction on Plot XXX, Shauri Yako, Muhoroni, was supervised by her mother-in-law, who, since the completion of the construction, was the one collecting rent.
10. She averred that Motor Vehicle No. KBN XXXT was purchased during the subsistence of their marriage, and she was responsible for driving and maintaining the same. At the same time, the respondent used motor vehicle registration number KBE 415U, which was also bought during the subsistence of the marriage.
11. Ms Odhuno stated that motor vehicle KBR XXC was bought with proceeds from the sale of a family car, Toyota Corolla 110, which was sold at Kes. 300,000/-. They registered the same as PSV as it was meant for a car hire business, and that she purchased a car tracking device, whose annual fee was



- Kes.24,000/- and maintained and managed the same. She averred that when the Respondent stopped the business, he gave the car to his girlfriend in Muhoroni.
12. On motor vehicle registration number KBC 250J, she stated that it was bought when the respondent was in Uganda, and it is the car they would use during their visit to Uganda. She further stated that by consent, they gave the said car to the Respondent's mother for her own use.
 13. The Claimant stated that the tractor KTCA XXXA was purchased during the subsistence of their marriage; however, by consent, it too was given to the Respondent's mother for her sugarcane farming business.
 14. She urged the court to allow the originating summons as prayed.
 15. The Respondent filed a replying affidavit sworn on 18th September 2020 in which he stated that he, together with the respondent they had been husband and wife for 25 years and that they divorced in September 2018. He averred that two of their three children, Jesse and Daisy, reside with him in the Nyali home in Mombasa and that he is the one who takes care of their shelter, medical, education, food, clothing, social and travel needs. Their other child, Jewel, 25, is a graduate working in Nairobi and lives independently.
 16. Mr Omollo stated that LR No.1XXX (Original No.1XXX) Section I Mainland North, Nyali (CR No. 32XXX) was bought by him with a mortgage extended to him by his then employer, Maersk (K) Ltd, in the year 2001. The employer deducted the full amount of the value of the house through a cheque-off system against his earnings. He averred that the Claimant did not contribute to the same; however, after the divorce, she went on a spending spree to maintain the house.
 17. The Respondent stated that LR No.23XXX (I.R 7XXX), Nairobi in Jacaranda Estate with three bedrooms (for rental purposes) was bought by him through a loan from Barclays Bank and that the Claimant never made any contributions towards the same.
 18. LR No. 7XXX(Original No.14XXX) Section II Mainland North Mombasa Kiembeni with a three-bedroomed house, he stated that he built the house at the cost of Kes.3,000,000/- and allowed the Claimant to collect rent therein for over 15 years without any condition.
 19. He further stated that Plot Nos. XXX and Plot no.XXX "B", both with three units of one-bedroom houses for rent in Shauri Yako Muhoroni, were jointly bought by his family members, and the payment receipts and sale agreement are in the name of his mother. He averred that the said information is within the Claimant's knowledge and therefore she can't claim a share of the same.
 20. He averred that the motor vehicle registration no. KBC XXXJ station wagon belonged to his former employer. That motor vehicle registration number KBE XXXU is not owned by him, while Motor Vehicles Registration Nos. KBR 163 Station Wagon and KBN 410T were purchased by him.
 21. He stated that tractors KTCA XXXA and KTCA XXXA both belong to his family and are registered under his mother's name. Thus, the Claimant can't make any claim against the same.
 22. Regarding the home in Koru, the Respondent averred that it was built in the ancestral home solely by him and his parents and was in existence long before the petitioner was even married to him and therefore the Claimant can't make a claim against the same.
 23. The Respondent offered to surrender certain assets to the Claimant.
 24. The Claimant filed a supplementary affidavit sworn on 7th December 2020 in which she reiterated the position in her supporting affidavit.



25. The matter was canvassed by way of viva voce evidence. The Claimant and the Respondent called one witness each. I will give a summary of their respective evidence below.
26. PW1 the petitioner herein adopted her two affidavits as evidence in chief and told the court that their marriage was blessed with three children Jewel, Jesse and Daisy.
27. She testified that during the subsistence of their marriage, she made monetary and non-monetary contributions towards the acquisition and development of the subject properties. Among the things she did was to supervise construction and development of the subject immovable properties. She urged the court to consider her contribution in its determination.
28. In cross-examination, she told the court that the Kiembeni property was acquired through a loan from Mwalimu Sacco. They developed the property together. Her contribution was her time and supervision of the construction. The total cost of construction was Kes. 700,000/-, and her contribution was around Kes. 70,000/-. Before divorce was completed, she was collecting rent of Kes. 23,000/-.
29. Regarding the Nyali House, she stated that the same was acquired in 2001. At the time of the purchase, it was valued at Kes.3,000,000/- The same was acquired through a loan from the Respondent's employer. She averred that she contributed indirectly by caring for the family, as the Respondent's salary had been reduced due to the loan he had taken. She conceded that the renovation was done after she had filed for divorce.
30. Ms Odhuno testified that she was unaware of how much it cost to purchase the Jacaranda Estate house in Mlolongo. She asked for an equal share of the said house.
31. On the houses in Shauri Yako, she stated that they were acquired in 2009 at Kes.12,500/-. She testified that the Respondent was the one who knows how much the houses cost. The rent payable is Kes.7,000 per house per month.
32. She testified that she had motor vehicle registration KBN 410T, while KBC XXXJ was in Koru. She was unaware who had KBR XXXC.
33. The Claimant stated that she had worked as a teacher all along, earning more than Kes.35,000/- per month and thus she was able to make monetary and non-monetary contributions.
34. It was her evidence that the Respondent had the custody of the children and that he was taking care of their expenditure as ordered by the court.
35. Mr Odhuno was the sole witness for the Respondent. He testified that the Claimant had been working as a teacher all through the subsistence of their marriage.
36. Regarding Plot No. 23187/193 at Jacaranda, he told the court that he purchased the same in 2004 at Kes.2,900,000/- by placing a deposit of Kes.1,100,000/- paid directly from his account. He borrowed Kes.1,500,000/- from Barclays Bank and paid the balance of Kes.300,000/- from his resources. The Claimant did not make any contribution towards the same. The house had been leased out since purchase, and the proceeds are used to educate the children.
37. He reiterated that the Nyali house was financed by his employer, Maersk Kenya Limited, a shipping company, at the cost of Kes.3,200,000/- in 2001.
38. On the Kiembeni house, he testified that the same is registered in the Claimant's name and that it is a 3-bedroom house he financed fully. The Claimant bought the land at Kes.200,000/-. While the construction cost him Kes.3,000,000/-.The Claimant is the one who collects rent from the said house.



39. Regarding the Koru plots, the Respondent testified that Plot Nos. 132 and 133 Koru belonged to his family, and his late mother signed all agreements. The Simba, which they stayed in after marriage, was built in 1988. The Claimant did not contribute to the purchase of the said plots.
40. On motor vehicle registration KBE 415U, he stated that it is owned by Freight Works Logistics, while KBB XXXD is unknown to him, as well as KBR XXXY. He testified that he has a motor vehicle registration number KBR XXXC while KBC 250 was gifted to him when he left Uganda.
41. He averred that tractors KTCA XXXA and XXXA are both registered in the name of his late mother and that they were bought by his parents when he was already married.
42. It was his evidence that during the subsistence of their marriage, the Claimant used to contribute towards household stuff and food stuff. He disagreed with the proposal that the assets acquired during the subsistence of the marriage be divided on 50:50 basis.
43. Upon closure of the Respondent's case, the court directed parties to file written submissions.
44. The Claimant, through her advocates Mutanu & Co. Advocates, filed written submissions dated 29th March 2024. The learned counsel for the Claimant submitted on four issues, namely: whether the suit properties are matrimonial properties; whether the Claimant contributed to the acquisition of the matrimonial properties; whether the Claimant is entitled to an equal share of the matrimonial properties; and who should bear costs.
45. On the first issue, counsel relied on Section 6 of the *Matrimonial Property Act* and submitted that the fact that the suit properties were acquired during the subsistence of marriage had not been disputed.
46. She further submitted that Plot LR.No.7XXX (the Kiembeni property) was purchased through contribution by both parties, with the Claimant taking a loan.
47. Regarding LR No. 1XXX, counsel submitted that the Respondent acquired it through a cheque-off system against his earnings as an employee of Maersk Kenya Ltd. She submitted that it was the Claimant who went to look for the house. She also used her resources to take care of the household needs when the Respondent could not as he was servicing the loan.
48. On Plots 132 and 133^B Shauri Yako, Muhoroni counsel submitted that they were purchased during the subsistence of the parties' marriage upon the recommendation of the Claimant's mother-in-law and that the Claimant approved the purchase when the Respondent informed her.
49. On LR No.2XXX(I.R No.7XXX) Nairobi (Jacaranda House), counsel urged that it was purchased in 2004 by the Respondent after he agreed with the Claimant that he would take a loan.
50. She submitted that motor vehicle KBN XXXT was purchased as the family car and had been in the possession of the Claimant since 2011. KBE XXXU was purchased when the Respondent was a director at Freightworks Logistics Limited and was used for the car hire business by the Claimant, and she fitted a car tracking device, serviced the car, ensured insurance was up to date and performed general maintenance. KBR 163 C was bought after the sale of an old family car.
51. On the 2nd issue, counsel relied on Sections 2 and 9 of the *Matrimonial Property Act* and various decisions of the Court and submitted that the Claimant contributed towards the acquisition of the matrimonial properties and was therefore entitled to a share thereof.
52. On the 3rd issue, counsel relied on Article 45 of *the Constitution* and Section 7 of the *Matrimonial Property Act*. She submitted that the Claimant is entitled to an equal share of the matrimonial property as she equally contributed to their acquisition and maintenance during their 25-year-old union.



53. On the cost of suit, counsel submitted that costs follow the event and that the same should be awarded to the Claimant. Counsel urged the court to allow the originating summons as prayed.
54. The Respondent, through his advocates Muga Apondi & Associates, filed his written submissions dated 24th April 2024. Counsel relied on Article 45(1) (30 of *the Constitution* and Sections 6 and 7 of the *Matrimonial Property Act*. He submitted that the examination on the Claimant revealed that she had never held any job for a reasonable period of time. Under the circumstances, she had never had any steady income to support the family and was entirely dependent on the respondent. Counsel urged the court to dismiss the originating summons with costs.
55. I have considered the pleadings of the parties, the evidence adduced, and the submissions made by their counsels. This court is called upon to divide properties between former spouses. Has the Claimant made a case for such a cause of action? To consider the matter, I must first set out the legal position.
56. Section 6(1) of the *Matrimonial Property Act* defines matrimonial property as follows:
1. For the purposes of this Act, matrimonial property means—
 - a. the matrimonial home or homes;
 - b. household goods and effects in the matrimonial home or homes; or
 - c. any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.
 2. Despite subsection (1), trust property, including property held in trust under customary law, does not form part of matrimonial property.
 3. Despite subsection (1), the parties to an intended marriage may enter into an agreement before their marriage to determine their property rights.
 4. A party to an agreement made under subsection (3) may apply to the Court to set aside the agreement and the Court may set aside the agreement if it determines that the agreement was influenced by fraud, coercion or is manifestly unjust.
57. Section 2 of the *Matrimonial Property Act*, 2013 in the following terms:
- In this Act, unless the context otherwise requires—
- “Contribution” means monetary and non-monetary contribution and includes—
- a) Domestic work and management of the matrimonial home;
 - (b) Child care;
 - (c) Companionship;
 - (d) Management of family business or property; and
 - (e) Farm work.
58. Section 9 of the same Act recognizes contribution through improvement of a property acquired before or during the marriage in the following terms:
- “Where one spouse acquires property before or during the marriage and the property acquired during the marriage does not become matrimonial property, but the spouse



makes a contribution towards the improvement of the property, the spouse who makes a contribution acquires a beneficial interest in the property equal to the contribution made.”

59. Further, Section 7 of the *Matrimonial Property Act* is clear in its terms 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 divided between the spouses if they divorce or their marriage is otherwise dissolved.”

60. In the case of *T M W v F M C* [2018] KEHC 2482 (KLR), the Court stated as follows: -

“Turning the provisions of the *Matrimonial Property Act*, Section 6 of the *Matrimonial Property Act*, 2013 defines a matrimonial property to include the matrimonial home or homes, any household goods in the home or homes or any other property jointly owned and acquired during the subsistence of the marriage. Basically for property to qualify as matrimonial property, it ought to have been acquired during the subsistence of the marriage between the parties unless otherwise agreed between them that such property would not form part of matrimonial property.”

61. The court in the case of *AWM v JGK* [2021] KEHC 4780 (KLR), in dealing with non-monetary contribution, stated,

“It is my considered view that the non-monetary contribution often-times cannot be quantified. If that contribution were to be reduced to monetary terms, I am sure that a woman’s non-monetary contribution in the home would amount to a higher amount compared to that of the man. It is my finding therefore that the Applicant made monetary and non-monetary contribution towards acquiring the matrimonial property and that her non-monetary contribution is higher than that of the Respondent.”

62. The court in the case of stated:-

MNH v FHM [2018] KEHC 1183 (KLR)

“What the *Matrimonial Property Act* of 2013 does is formalize and make provision for giving due consideration to both the monetary and non-monetary contribution of parties in a marriage as is evident from the clauses cited in the antecedent paragraphs. This position has been cemented by the Courts in different instances. For starters, in *NWM v KNM* [2014] eKLR it was stated that the court must give effect to both monetary and non-monetary contributions, that both the applicant and the Respondent made during the currency of the marriage to acquire the matrimonial property.”

63. Further, the court in the case of

EKTM v ECC [2021] KEHC 1359 (KLR) stated:-

“It follows from the foregoing that despite the constitutional requirement that parties in a marriage have equal rights, each party must be able to prove either contribution was monetary or non-monetary lest a party will not be entitled to any share in the matrimonial property. The onus squarely falls on the party who alleges contribution to prove such contribution in the acquisition of the subject property, be it monetary or non-monetary contribution.”



64. In *EKTM v ECC* [2021] KEHC (supra) the Court stated that:-

“It therefore follows that the mere fact that one spouse is not engaged in any income generating venture does not necessarily mean that the said spouse is not contributing to the acquisition of the matrimonial property and ought to leave the union barehanded. One however has to show some contribution made towards the acquisition and preservation of the acquired property. In the old days it was presumed that it was the husband who would be going to work while the wife stays at home. In a majority of the old cases, non-monetary contribution was geared towards ensuring that the non-working wife’s contribution was appropriately taken into account when the marriage was dissolved. However, these days, it is not uncommon to find cases where the roles have reversed. Maybe out of sheer laziness or due to circumstances beyond the control of the husband, such as redundancy, it is the wife who is in income generating activity while it is the husband who is left to look after the home. In a case where the husband is at home out of sheer laziness, it would be unfair to the wife to hold that in the event that the marriage is dissolved, the property acquired during the marriage be shared equally. In that event, I have no doubt at all in my mind that the husband must accept his position and move on without making any claim to the properties he never contributed in their acquisition. As was appreciated by Kiage, JA in *P.N.N v. Z.W.N* [2017] eKLR:

“In such circumstances, an assessment of the inauspicious party’s non-monetary contribution may well turn out to be in the negative, the account in debit. No fifty-fifty philosophy would grant such a party any right to property acquired without their contribution notwithstanding their negation or diminution of the efforts towards its acquisition.

In the end it does work out justly and fairly enough in that assessment may turn out 50:50 or as in the case of *NJOROGE v. NJOROGE* (supra) 70:30 in favour of the man. There is no reason why the math may not be in favour of the wife if that is what the evidence turns up. In many cases in fact, percentages never feature as the Court only ascertains who between the spouses owns which property.”

On the other hand, the husband may not be in an income generating engagement but may be involved in other non-monetary activities such as management of the home by making sure that it is clean, supervision of the farm or business activities etc. It is not uncommon to find such a husband dropping and picking the children to and from school. Such contribution must be taken into account when the marriage is dissolved and ought to be quantified somehow.

The reverse is also true when it comes to the wife. However, one must take into account the fact that the wife also bears the burden of childbearing, a task which husbands do not perform. However, it is possible to find that the contribution of a particular wife to the acquisition of the properties is minimal due to sheer laziness. On the other hand, it is not unheard of to find circumstances where a working wife decides to leave her job in order direct her attention fully to the care of the family. That is a fact that must also be considered in determining the apportionment of contribution...”

65. What do the above authorities tell me? In my view, both monetary and non-monetary contributions must be reckoned during the division of the matrimonial properties.



66. It is not in dispute that the suit properties were all acquired during coverture. In my view, all the suit properties are therefore matrimonial properties liable to division on the basis of contribution by each spouse.
67. During the hearing on 30th March 2023 the parties entered into a consent vide which the assets listed in Prayers 2 (r) to (iiii) of the Amended Originating Summons dated 3rd August 2020, with the exception of Prayers 2(aaaa), 2(mmmm) and 2(nnnn), was allowed. As this is what the parties agreed, the consent of the parties is hereby adopted by the Court. Consequently, the subject assets are hereby declared as matrimonial properties jointly owned by the parties hereto equally.
68. Since I have already established that all the properties were acquired during coverture and are matrimonial properties, I will turn to each of them and consider how they should be divided.
69. From the evidence adduced, it is clear that LR No 2XXX (IR No 7XXX) Nairobi, in Jacaranda Estate, with a three-bedroomed house for rent, was purchased with a loan taken by the Respondent. In my view, the Claimant made a non-monetary contribution towards its purchase, maintenance, and management. As the wife of the Respondent, she provided him with a lovely home environment, and together they had three children. While servicing the loan, the Claimant would necessarily have stepped in on the domestic front to pick up the slack.
70. Having found that the Claimant contributed what share of the said property is due to her? Establishing what each party contributed is not, in most instances, amenable to mathematical exactitude. There is almost always a dearth of records of what each party contributed. The presumption parties have is that their union will not end up in the Divorce Court. I am therefore in agreement with the holding in ENK v JNK [2015]eKLR that:-
- “When parties get into marriage, they usually intend the arrangement to be for life. Divorce is not in their minds. This is the position regardless of the system of law under which the parties contract the marriage. Indeed, that is the conception of marriage in Hyde v Hyde and Woodmanse [1866] 1 LRIP & D 1230. The parties to the marriage thereafter live their lives according to the concept of permanence of their marriage. This then creates the presumption that whatever property is acquired must have been intended to be for the benefit of the family.”
71. For want of records, I am persuaded that the fair and just way to divide the estate is based on the equitable maxim that equality is equity. I therefore find and hold that LR No 2XXX (IR No 7XXX) Nairobi, in Jacaranda Estate, with a three-bedroomed house for rent, owned by the parties on a 50:50 basis.
72. LR No. 1XXX (Original No. 1XXX) Section I Mainland North Nyali (CR No. 3XXX) was purchased with a loan from Maersk Kenya Limited, where the Respondent worked. Given that the loan was recovered through a salary check-off system, it is clear to me that the financial contribution was made by the Respondent only. That said, I take notice of the fact that loan deductions denude a spouse's ability to make contributions elsewhere. I am persuaded that the Claimant paid for the costs of running the home, paid bills and maintained the home while providing the Respondent with a good home that made him thrive. I am thus persuaded that the Claimant made a non-monetary contribution in the form of companionship, childcare, maintenance of the house and management of the family business. The Nyali home was their matrimonial home. In the circumstances I am persuaded that justice in this matter calls for the said property to be declared as being owned on 50:50 basis by the Claimant and the Respondent.



73. The principles I have applied above would apply to LR No 7XXX (Original No 14XXX), Section II Mainland North, Mombasa Kiembeni with a three-bedroomed house. Although the Claimant purchased the same, the construction cost was paid for by the Respondent, with the Claimant supervising. I therefore find and hold that it is held on a 50:50 basis by the parties hereto.
74. From the evidence adduced, it is evident to me that the two plots in Muhoroni, identified as Plot No.XXX and Plot No. XXX, Shauri Yako Muhoroni, each with 3 units of 1-bedroom houses, were purchased by the Respondent. The evidence before the Court is clear that the Respondent's mother supervised construction. During the hearing, the court noted that the Claimant wasn't well versed with the said properties. Whereas these are matrimonial properties, the contribution of the Claimant wasn't significant. In my view, a share of 20% would be fair and just. I therefore find and hold that the two plots are owned on an 80:20 basis by the Respondent and the Claimant, respectively.
75. Turning to the movable properties, I note that the motor vehicle registration number KBC 250J station wagon was gifted to the Respondent by his employer and was an employment benefit at the time of his exit. I therefore find and hold that it belongs to the Respondent wholly and that the Claimant is not entitled to a share of it.
76. Motor vehicle registration number KBN XXXT, Fun Cargo was gifted by the Respondent to the Claimant. The Respondent stated as much in his testimony. Section 15 of the *Matrimonial Property Act* is clear that:-
- “Where a spouse gives any property to the other spouse as a gift during the subsistence of the marriage, there shall be a rebuttable presumption that the property thereafter belongs absolutely to the recipient.”
- In the circumstances, I find that it belongs to the Claimant wholly and is not up for division.
77. It is evident that the motor vehicle registration number KBR 163C station wagon is used by the Respondent for his own private locomotion. I find and hold that it wholly and solely belongs to the Respondent.
78. The evidence adduced shows that motor vehicle registration number KBE XXXU is owned by Freight Works Logistics Ltd. It is therefore not a matrimonial property.
79. There is no evidence that motor vehicle registration numbers KBB 973D and KBR 823Y exist. In the circumstances, no declaration is made in respect of these.
80. From the evidence adduced I find and hold that ploughing tractors KTCA XXXA and KTCA XXXA belong to the respondent's mother and are not matrimonial properties.
81. It was the duty of the Claimant under section 107 of the *Evidence Act* to provide proof of ownership of shares by the Respondent in Seashore Shipping Services Ltd and Freight Works Logistics Ltd. She failed to do so. Had she provided evidence from the BRS, for example, Form CR12, the court would have had the basis of ruling appropriately. For want of evidence, the claim in respect of the said companies cannot stand.
82. I am not persuaded that the claim in respect of the ancestral home in Koru is merited. When the parties got married, the Simba already existed, as admitted by the Claimant, who testified that it was where they lived whenever they were upcountry. The only claim the Claimant could make was for improvement. No evidence of any improvement was provided. In the circumstances, it is my view that the Claim regarding the ancestral home is not merited.



83. Similarly, the claim for a share of the saloon business is not merited. No cogent evidence in support thereof was provided. There is therefore no basis for the court to make a declaration in respect of a business which may not actually be in existence and whose ownership, in any event, cannot be ascertained.
84. As the parties agreed by consent, the properties listed in paragraphs 2(r) to 2(iiiii) of the Amended Originating Summons are declared jointly owned. I find and hold that the said matrimonial properties are owned on a 50:50 basis with the exception of the properties listed in paragraphs 2(aaaa), 2(mmmm) and 2(nnnn) of the Amended Originating Summons. I find and hold that the latter properties belong solely to the Respondent. The Respondent, from my observation, has a sentimental attachment to them, not based on their present values.
85. I direct that the immovable property and motor vehicles I have declared to be jointly owned be valued within 60 days of the date hereof by a valuer or valuers appointed jointly by the parties.
86. If the parties are unable to agree on the identity of the valuer/valuers, then the valuation will be done by the government valuers.
87. The parties will have 30 days to buy each other out. If they are unable or unwilling to do so, the properties will be sold by public auction. In that event, the proceeds shall be shared in the proportions I have mentioned/indicated above.
88. As this is a dispute over matrimonial properties between former spouses, I make no orders regarding costs. The parties will therefore bear their own costs.
89. Orders accordingly.

DATED AND SIGNED AT MOMBASA THIS 23RD DAY OF AUGUST 2024. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:-

Ms Nafula, holding brief for Ms Musyoki, for the Claimant;

Mr Muga-Apondi, for the Respondent; and

Arthur - Court Assistant.

