



**IWG v GMG (Civil Case 54 of 2015) [2024] KEHC 10368 (KLR)  
(Family) (23 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 10368 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
CIVIL CASE 54 OF 2015  
SN RIECHI, J  
AUGUST 23, 2024**

**BETWEEN**

**IWG ..... APPLICANT**

**AND**

**GMG ..... RESPONDENT**

**JUDGMENT**

1. The applicant IWG and the Respdoent GMG married under the African Christian Marriage (now repealed) on 2<sup>nd</sup> February, 1991 at PCEA St Andrews Church in Nairobi. They have 3 issues of the marriage.
  1. MSM born in 1991
  2. HW born in 1993
2. The applicant filed for dissolution of the marriage in Nairobi High Court at Divorce cause No 99 of 2004. The marriage between the applicant and respondent was dissolved and decree absolute issued on 2<sup>nd</sup> July, 2021.
3. The applicant filed this originating summons dated 24<sup>th</sup> April, 2015 seeking the following orders: -
  - a. That this Honourable court be pleased to issue a declaration that the applicant and respondent are joint property owners of all the parcels of land known as LR 16513/xx and LR No 14968/xxx (IR 64521).
  - b. That this Honourable court be pleased to order that the above said parcels of land be valued and sold and the net proceeds be divided in the ration 60:40 in favour of the applicant.
  - c. That the Respondent be ordered to pay the cost of this proceedings in any event.



- d. That this honourable court be pleased to make further orders as it may deem fit and just to grant.
4. GMG the respondent opposed the summons and filed a replying affidavit sworn on 18<sup>th</sup> October, 2017. He depones that the applicant and himself were married and had 3 issues of the marriage. She worked first as a Secretary to an NGO and later Kenya alliance Insurance Company. While at the Insurance Company she declined paying for family expenses. She later bought a Rav 4 vehicle and when he asked her about the source of funds, she was not truthful.
5. In 2005 she moved out of the matrimonial home to her house in Kileleshwa. He deponed that he acquired the listed properties alone and without the contrition of the applicant. He developed and renovated the family home where he currently stays with their son MSM the first born while Hilda and Ivy use their bed-rooms when they visit. He also bought and developed the Juja property without applicant's contribution. He depones that the applicant has property in Kileleshwa where she is currently living and has not disclosed it for distribution. Finally, he depones that an order to sell the home where he and his children stay will not be in the best interest of the children.
6. The applicant filed a supplementary affidavit sworn on 16<sup>th</sup> November, 2017 in which she further depend that she bought her motor vehicle from personal savings and loan. She also in 2006 contributed Kshs 150,000/- for renovation of matrimonial home. She further stated that the Juja property was jointly acquired and that it was true that Rental units in LR 16513/xx was developed when they were separated.
7. Applicant also responded to the affidavit of MSM sworn on 18<sup>th</sup> October, 2017 stating that he should be kept out of these proceedings.
8. By consent the matter proceeded by way of viva voce evidence.
9. IWG testified that she was married to the respondent. She is currently a businesswoman and stays in Kileleshwa, she adopted the supporting affidavit and supplementary affidavit as her evidence in chief. She testified that the listed properties were acquired through joint efforts but registered in the respondent's name. She testified as follows:
1. LR 16513/xx – Commercial building at Juja – Juja Property  
Applicant testified that it was acquired in 1991. The plot was acquired in August/September, 1991 after they married in February 1991. She participated in buying the plot only. The plot was developed in 2009 when she had left the respondent. Her role in this property was to connect the respondent to her brother in law who looked for the plot. She testified she could not quantify monetarily her contribution to this property. She confirmed that the purchase price was fully paid for by the Respondent.
  2. LR 14968/xxx – Muthithi Estate Near Kiambu – Kiambu Property  
The applicant testified that they started buying the plot in 1993 and finished the process in 1994. She is the one who looked for the plot. They constructed the matrimonial home between 1994 -1996. In the purchase of the plot, she testified that it is the respondent who paid the purchase price. On the development of the house she gave Kshs 40,000/- to respondent. She testified that at the time she was the one paying rent while the respondent was constructing.
10. On being cross-examined by Njomo for the respondent she stated that at the time she was earning about Kshs 20,000/- or Kshs 10,000/- but the payslip produced showed Kshs 2,172/- net pay. She stated that the house cost Kshs 2.5 Million to build.



11. The respondent GMG testified that at the time they married, he was working as a Manager at Corporate Insurance Company. He adopted his replying affidavit and further affidavit as evidence in Chief. In respect to the acquisition of the property he stated as follows:
  1. LR 16513/xx - Juja Property  
He testified that he bought the plot in 1991. He started developing it in 2014 when they were not living together. It cost Kshs 3 million to develop.
  2. LR 14965/152 Muthithi Estate Near Kiambu – Kiambu Property  
Respondent testified that he bought the plot at Kshs 450,000/-. He paid 101% of the purchase price which he financed from his savings. He developed the property and denied that he received Kshs 40,000/- from the applicant.
12. On being cross-examination by Luchena for the applicant he stated that they lived together on this property with their children. He also confirmed that he lives there with his son Mark. All the children are now adults and parental responsibility was shared by order of the court.
13. Parties were directed to file written submissions within 30 days. Mr. Njomo for the Respondent submitted that while the properties were acquired during the subsistence of the marriage, the applicant did not contribute to their acquisition or development. Counsel submits that the evidential burden is on the applicant to prove contribution to the acquisition or development. This duty counsel submits, she has failed to discharge. While Section 2 of the *Matrimonial Property Act* provides for both monetary and non-monetary contrition.
14. Finally, he submits that the respondent has testified that he acquired the listed properties, developed and maintained them from funds generated from his salary and business. He, therefore argues that court to dismiss this originating summons with costs.

### **Analysis and Determination**

15. From the pleadings, evidence and submissions the issues are crystalized for determination are: -
  1. Whether the properties namely LR No 16513/xx and No 14968/xxx (IR 64521 are matrimonial property.
  2. Whether the applicant did contribute either directly or indirectly to their acquisition or development and if so to what extent and what is her share.
16. On whether the suit properties were matrimonial property, Section 6 of the *Matrimonial Property Act* states: -
  - (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.

Section 2 provides:

2. Interpretation 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;

"family business" means any business which:

- (a) is run for the benefit of the family by both spouses or either spouse; and
- (b) generates income or other resources wholly or part of which are for the benefit of the family;

"matrimonial home" means any property that is owned or leased by one or both spouses and occupied or utilized by the spouses as their family home, and includes any other attached property; "matrimonial property" has the meaning assigned to it in section 6; "spouse" means a husband or a wife.

17. In application for division of matrimonial property under the Act, the applicant must establish by evidence the following:-
  1. That the applicant and respondent were married.
  2. That the parties have now divorced.
  3. The property was acquired during the subsistence of the marriage.
  4. The contribution of the applicant whether monetary or non-monetary to the acquisition or development of the property.

### **1. LR 16513/xx Juja Property**

18. This property is registered in the name of the Respondent. The applicant in her evidence stated that it is the respondent who purchased the plot. She did not contribute any money for the purchase. Her only role was to link Respondent to her brother who assisted in looking for the plot. The property was developed when they had separated and she did not pay anything toward its development. On her own admission she did not contribute financially to the acquisition or development of the property. Having so admitted, I find that the applicant did not contribute to the acquisition of the plot nor the development thereon which was done after she had left the Respondent. I therefore find that the property belongs to the Respondent absolutely.



## 2. LR No 14968/xxx (IR 64521) Kiambu Property

19. This property is registered in the name of the Respondent. It was the home where both the applicant and the Respondent were staying. The respondent testified that it was acquired in 1994 and he moved in with the family in 1996 after building the house. At the time of moving in 2 children had already been born and the 3<sup>rd</sup> one was born while staying there. The Respondent confirms that he still stays there with his son Mark but the other children who are daughters have each a room on the property where they sleep when visiting.
20. The applicant testified that she took a loan of Kshs 40,000/- and gave it to the Respondent for the development of the property. The Respondent in his evidence testified that he purchased the plot and put up the house alone. He denied receiving Kshs 40,000/- or any financial contribution from the applicant.
21. In her evidence the Applicant testified that she gave the Respondent Kshs 40,000 towards the development at property when they were building the house. She therefore admits that she only participated in the development of the house.
22. Section 2 of the *Matrimonial Property Act* provides that contribution includes monetary and non-monetary contribution. Non-monetary contribution includes but is not limited to domestic work and management of the matrimonial home, child care, companionship, management or family business or property and farm work.
23. The applicant testified that beside the Kshs 40,000/- she gave to the Respondent, she was during the development paying for rent for the house where they were staying in. I have considered the evidence. I do find that during the construction of the house, the applicant contributed Kshs 40,000/- and also offered non-monetary contribution. I note that the both parties agree that their short lived union was not smooth due to severe issues. I however do assess the applicant's contribution at 20% of the value of this property and the Respondent's share is assessed at 80%.
24. The applicant sought that this property be valued and sold and the net proceeds be divided among the parties. However during her evidence in court she stated:-

"I have proposed that the respondent register the property jointly with our children and then I am left out."
25. There is evidence that all the children are now adults. The Respondent testified that he stays with Mark Muiru Gichungi on the property. As the applicant has requested the court to assign her share the property to the children, I hereby assign the Applicant share of 20 % to the property to Mark Muiru Gichangu who is staying with the Respondent on the property.

Each party to bear his/her own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23<sup>RD</sup> DAY OF AUGUST 2024.**

.....

**S N RIECHI**

**JUDGE**

