



**LWN v PKN (Matrimonial Cause E001 of 2020)
[2024] KEHC 13103 (KLR) (29 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13103 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
MATRIMONIAL CAUSE E001 OF 2020**

J WAKIAGA, J

OCTOBER 29, 2024

N THE MATTERS OF MATRIMONIAL PROPERTY ACT 2013

AND

IN THE MATTER OF THE LAND REGISTRATION ACT

BETWEEN

LWN APPLICANT

AND

PKN RESPONDENT

JUDGMENT

1. By an originating summons dated September 30, 2020 the Applicant sought the following Orders:
 - a. That a declaration do issue that under listed properties which were registered in the name of the Respondent and under his control were owned jointly by the Applicant and the Respondent and or held beneficially and in trust for the Applicant – LOC.20/Gikindu – Kambirwa/xxxx.
 - b. That an order do issue declaring that 50% or such other or higher proportion of the aforesaid property is held by the Respondent in trust and for the beneficial interest of the Applicant.
 - c. That an Order do issue declaring that the Applicant is entitled to the developed side of the said property.
 - d. That in the alternative the said property be sold and the proceeds shared equally between the parties.
2. The summons was supported by the affidavit of the Applicant in which she deposed that she was married to the Respondent through Kikuyu Customary Law for twenty years until they were granted



divorce at the Chief's office before the Kikuyu elders. During the subsistence of the said marriage, they acquired the subject property which was registered in the name of the Respondent and registered a business called Lupet Hardware which she used to run.

3. That before then, they owned a property known as LOC.11/Maragi/ xxxx which was jointly registered in their name and which they sold to enable them acquire the subject property and that whereas the stock from the business was divided equally, the Respondent had declined to grant her half share of the subject land.
4. The Respondent who was served failed to file any response to the said summons and therefore the cause proceeded as undefended by way of oral evidence, at which the Applicant adopted her statement and testified they had sold the land which was registered in their joint name and the proceeds therefrom used to purchase the subject property which was registered in the name of the Respondent.
5. It was her evidence that they had entered into an agreement before the chief on the division of the properties acquired during the marriage into half which was used to divide the proceeds from the hardware business and that the Respondent subsequently declined to divide the subject property.

Determination

6. The issue of division of matrimonial property upon dissolution of marriage is yet to be settled with one school of thought being in favour of 50;50 reading from the equality provision of Article 45 (3) of *the Constitution* which provides that the parties to a marriage are entitled to equal rights at the time of marriage, during the marriage and at the dissolution of the marriage while the Supreme Court in the Case of JOO v MBO stated that the equality provision in Article 45(3) did not entitle any Court to vary existing property rights of the parties and take away what belongs to one spouse and award half of it to another spouse that has contributed nothing to its acquisition merely because they are married to each other.
7. The Court proceeded to state that to do so would mean that Article 40(1) and (2) of *the Constitution* which protect the right to property would have no meaning which would not have been the intention of the drafters. The Supreme Court therefore reinstated the contribution principles which had been in existence in the jurisprudence raising from the Courts before 2010.
8. The issues for determination before me therefore remain whether the subject property is matrimonial property and if so whether the Applicant contributed to its acquisition and or improvement and by what percentage.
9. From the evidence tendered it is clear that the Applicant and that Respondent initially owned LOC 11/MARAGI /xxxx which was registered in their joint name and which by an agreement dated 20th July 2016 was sold and on the 26th July 2016 the Respondent entered into a sale agreement for the purchase of the subject property which 22nd day of January 2020 the Applicant registered a caution on the said land claiming licensee interest.
10. I am therefore satisfied that the suit property herein is matrimonial property and was therefore held in trust and for the benefit of the Applicant and that the same was acquired through the joint effort of the Applicant and the Respondent.
11. I further find and hold that the Applicant contributed to the acquisition of the said property both in monetary and non-monetary terms and that the parties having shared the proceeds from the business venture into 50;50, this property shall therefore be divided between the Applicant and the Respondent on the basis of 50:50 and that the Respondent shall be entitled to the developed part of the property and it is ordered.



12. This being a family dispute, each party shall bear their own cost.

DATED, SIGNED AND DELIVERED AT MURANGA THIS 29TH DAY OF OCTOBER 2024

J. WAKIAGA

JUDGE

In the presence of:

No appearance by Ms Kimani

Jackline – Court Assistant

