



**PJ v PKA (Matrimonial Cause E007 of 2023)  
[2024] KEHC 16241 (KLR) (18 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 16241 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MATRIMONIAL CAUSE E007 OF 2023  
E OMINDE, J  
DECEMBER 18, 2024**

**BETWEEN**

**PJ ..... PLAINTIFF**

**AND**

**PKA ..... RESPONDENT**

**JUDGMENT**

1. The Plaintiff instituted this cause vide an Originating Summons dated 06/06/2023 seeking the following orders;
  - a. That a declaration be issued declaring that the Applicant/plaintiff is entitled to whole share or such other share as the court may award of the properties (movable and immovable) acquired by the plaintiff prior and/or during the subsistence of their marriage and that the Respondent holds title, interest, ownership and/or possession of the said properties in trust for the plaintiff/Applicant in their respective shares as the legal owners and cestui que trust respectively namely:
    - a. 1.7 Acres comprised in L.R NO. Turbo East / Leseru Block 6 (Kamagut)/43 being the matrimonial home.
    - b. Motor vehicle registration no. KBJ xxxG, Toyota Corolla.
    - c. House-hold items and all other properties acquired during the subsistence of the marriage and personal effects full details whereof are well within the Respondent’s knowledge.
  - b. An order do issue directing that the above matrimonial properties be shared according to the contribution made towards their development and/or improvement or in any other ratio as this honourable court may deem just and expedient to order.



- c. An order do issue directing that the household items be released to the Applicant/Plaintiff and/or that the same be shared in any ratio as this honourable court may deem just and expedient to order.
  - d. In the alternative to all the above, an order do issue to the effect that the Respondent is not entitled to any share of the above properties as enumerated under (l)(a)-(c).
  - e. In the alternative to all the above, an order do issue directing that a valuation be carried out on all the above properties and a valuation report be filed in court by a mutually acceptable valuer after which the court will apportion what is payable to each party and subsequent to the said valuation, the Respondent be ordered to pay to the plaintiff her entitlement and/or such other share as the court may order in the best interest of justice.
  - f. Upon the grant of any and/or all of the foregoing, a permanent injunction be and is hereby issued restraining the Respondent by himself, his servants, agents and/or employees from interfering with the plaintiff's lawful enjoyment and quiet possession of the properties awarded to her.
  - g. Such other and/or further orders be granted as the court may deem fit, fair and expedient in the circumstances.
  - h. The Respondent be condemned to pay costs and interest to the Plaintiff.
2. The Summons is premised on the averments contained in the affidavit in support of the Summons sworn by the Applicant.
  3. The Applicant deponed that on 19/04/2008, the Respondent and herself solemnized their union as husband and wife. She produced a copy of their marriage certificate as annexure PJ-1. She stated that they were blessed with one issue and during the subsistence of their marriage, the Respondent was of violent tendencies which culminated with her moving to court to dissolve the marriage.
  4. She stated that during the subsistence of their marriage she was gainfully employed and hence financially able to acquire and develop properties. For the benefit of their family, she secured financial facilities which enabled her purchase LR No. Turbo East/leseru Block 6 (kamagut)/43 on which she solely constructed their matrimonial home. She annexed statements of the loans she took for these purposes. Additionally, she stated that payment for the loans is made through monthly salary deductions.
  5. The deponent averred that the Respondent retained possession and control of all the properties before she moved out of the matrimonial home. She stated that it is only just and fair that the properties she acquired solely or with minimum contribution on the part of the Respondent be distributed in accordance with their respective contributions. Alternatively, that the properties be sold and the proceeds thereof shared proportionately.
  6. The Applicant filed a Notice of Motion under certificate of urgency on the same date as the originating summons and the court granted the prayer for an interim injunction over LR No. Turbo East/ Leseru Block 6 (kamagut)/43. The Respondent was served with Summons to enter appearance dated 21/07/2023 and counsel for the Applicant filed an affidavit of service dated 22/06/2023 as proof of service.



## Hearing of the Summons

7. The Originating Summons was fixed for hearing on 30/04/2024. The Applicant testified as PW1. She stated that she currently lives in the United Kingdom and that the Respondent was previously her husband. Further, that she had filed a witness statement dated 06/06/2023 which she wished to have adopted as her evidence in chief. She stated that she had also filed a list of documents which she wished to produce as exhibits which were then marked as exhibits 1-14. She further testified that she had asked the court to distribute the matrimonial property between her and her husband in the ration of 70:30 in her favour. This was based on the financial contribution she made towards the building and development of the premises. She asked the court to grant the prayers as sought.
8. That marked the close of the prosecution case and the court directed that the cause be prosecuted by way of written submissions.

## Applicants' submissions

9. Learned counsel for the Applicant filed submissions dated 04/10/2024. She urged that it is evident from a casual perusal of the supporting affidavit, that the parties herein were indeed legally husband and wife having solemnized their union on 19<sup>th</sup> April, 2008 at ACK All Saints Nandi Hills pursuant to the provisions of Cap. 151 of the Laws of Kenya (repealed) vide certificate of marriage S.N 15xxxx PW1 produced in evidence as PExh 1. Further, that it is PW1's uncontroverted evidence that their said union was subsequently dissolved vide the decree absolute issued vide Eldoret Chief Magistrate's court Divorce cause E03 of 2022 which decrees nisi and absolute she produced as PExh 3 and 4 respectively.
10. Further, that it is her case that she contributed towards the acquisition and development of the matrimonial properties which form the subject of these proceedings. She corroborates her evidence of contribution with loan statements for (particulars withheld) Sacco, loan statements from KCB, Mpesa statements and pay slips which she produced as Pexh-5, 6, 7 and 12 respectively. The Plaintiff places reliance on the development plan, log book for motor vehicle registration number KBJ xxxG, a bundle of photographs, deposit slip in favour of David Serгон Chesire and the sale agreement in favour of David Kipkosgei Tarus as proof of ownership of the matrimonial properties.
11. Counsel cited Section 6(3) of the *Matrimonial Property Act* and urged that it is not disputed that the marriage between the parties herein has since been dissolved as envisaged by the above provision. It is also not disputed that the Applicant has produced several documentary evidence in support of her contribution towards the development and/or improvement of the matrimonial properties in issue particularly her pay slips confirming deductions towards the loans she procured. From the Applicant's testimony, it is evident that she relied majorly on financial facilities advanced to her by her employer and Saccos. She told the court in her evidence that she contributed more than the Respondent hence her prayer that this court apportion the properties in the ration of 70:30 in her favour. Counsel urged the court to be persuaded that the Applicant is entitled to the reliefs sought in the affirmative.
12. Counsel submitted that 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. She referred the court to the case of PNN vs ZWN (2017) eKLR and urged that the fact that the properties in issue were acquired and/or developed during the subsistence of the marriage between the parties herein is not a guarantee to entitle the Respondent to a share thereof. He has to prove his contribution to the same to the required standard.



13. Additionally, she cited Section 9 of the Act, urging that the said provision raises the question of contribution. Further, that what this court is left to determine is the kind of contribution applicable in the instant case which can be either be according to the provisions of Section 7 or Section 9 of the Act. There is no evidence that the Respondent made any contribution towards the acquisition and, or improvement of the suit properties. He chose not to participate in the proceedings and therefore, Section 9 is applicable to this case.
14. Counsel cited Section 14 of the *Matrimonial Property Act* and submitted that with regard to acquisition and development of L.R No. Turbo East/ Leseru Block 6 (Kamagut)/43, PW1 produced loan agreements and her pay slips indicating deductions as her source of income towards the said acquisition and development. It is her unchallenged testimony that the development on the aforesaid parcel of land was facilitated by her contributed financial efforts. Counsel referred the court to the case of Peter Mburu Echaria v Priscilla Njeri Echaria, (2007) eKLR and Article 45(3) of *the Constitution*, urging that the law provides that in the event of divorce, the matrimonial property is divided between the spouses according to the contribution of each spouse. Section 2 of the same statute defines "contribution" as monetary and non-monetary and includes;
  - a) domestic work and management of the matrimonial home
  - b) child care
  - c) companionship
  - c) management of family business or property and
  - d) farm work
15. Counsel cited Civil Appeal No. 142 of 2018, CWM-VS JPM [2017] eKLR, and urged that given that the plaintiff was married to the Respondent for 14 years, even in the absence of actual contributions, she must have made significant contributions towards the acquisition and construction of their matrimonial home. Counsel concluded by submitting that it is trite law that costs always follow the event and therefore, having proved her case on a balance of probabilities, the Respondent should be condemned to pay costs.

### **Whether the property amounts to Matrimonial Property**

16. Section 6 of the *Matrimonial Property Act* that defines matrimonial property as:
  - 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.
17. The evidence on record is uncontroverted that the Applicant and Respondent lived together as husband and wife from the time the marriage was solemnized as per the Marriage Certificate availed, to the time the said marriage was dissolved by the Court in the case herein cited. There is also no evidence forwarded to contradict and/or controvert the Applicant's assertion that the property the subject matter of this cause was acquired during the subsistence of the said marriage. In this regard, on a balance of probabilities, I find that the property is matrimonial property as per the provisions of Section 6 above



## Contribution towards acquisition of Matrimonial Property

18. Article 45(3) of *the Constitution* provides that:

“Parties to a marriage are entitled to equal rights at the time of marriage, during the marriage and at the dissolution of marriage”

19. Section 2 of the *Matrimonial Property Act*, 2013 defines contribution as follows:

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.

20. Section 7 of the *Matrimonial Property Act* provides;

“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.”

21. Section 9 of the *Matrimonial Property Act* provides as follows on 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.”

22. Section 14 of the *Matrimonial Property Act* states;

Where matrimonial property is acquired during marriage;

- (a) in the name of one spouse, there shall be a rebuttable presumption that the property is held in trust for the other spouse; and
- (b) in the names of the spouses jointly, there shall be rebuttable presumption that their beneficial interests in the matrimonial property are equal.

23. In the Court of Appeal case of PNN v ZWN [2017] eKLR Justice Kiage expressed himself as follows :

“Thus it is that *the Constitution*, thankfully, does not say equal rights ‘including half of the property.’ And it is no accident that when Parliament enacted the *Matrimonial Property Act*, 2013, it knew better that to simply declare that property shall be shared on a 50-50 basis. Rather it set out in elaborate manner the principle that division of matrimonial property between spouses shall be based on their respective contribution to acquisition.”



23. In TKM v SMW [2020] eKLR the Court of Appeal stated as follows:

“We bear in mind the edict in Muthembwa v. Muthembwa (2002) 1 EA 186, and many other decisions reminding the courts that in assessing the contribution of spouses in acquisition of matrimonial property, each case must be dealt with on the basis of its peculiar facts and circumstances but bearing in mind the principle of fairness.”

24. In AW -VS- MVCMAWM [2018] eKLR the Court of Appeal observed as follows:-

“..... This now takes us to the crux of appeal; that is whether the appellant was entitled, to a larger share being 50/50 ownership of the suit premises or as cross-appealed by the Respondent the award of Kshs.2 million was excessive. This suit was filed on 30<sup>th</sup> May, 2015 after the Matrimonial Property Act was in operation.....what proportion or share should the appellant be awarded? It is common ground that the suit premises was inherited by the Respondent and just the learned trial Judge, we appreciate no case is like another and each must be considered on its own merit while bearing in mind the peculiarities, circumstances and the principles of fairness and human worth in each case. Just like the old saying goes, "no one should reap where they did not sow and none should reap more that they planted." That is the basic tenet of equity which follows the law.”

25. In Civil Appeal No. 142 of 2018 in CWM-VS- JPM [2017] eKLR, the Court of Appeal held as follows:

“..... parties are of equal worth and human dignity, whatever their station in life. To the issue before us, it is obvious the appellant having been married for 18 years made some contribution to the family of Respondent at the time of such overture. In our view, that contribution, be it domestic work and management of the matrimonial home, child care or companionship falls within the definition of contribution under the Act”.

26. In the present case, I note that the cause has not at all been opposed by the Respondent and it follows therefore that the evidence of the Petitioner herein is uncontroverted in all aspects and respects on how the property was acquired during the subsistence of the marriage. For this reason, I find that on a balance of probabilities, the Applicant has proved that she did contribute towards the acquisition and development of the matrimonial property. Further I am also satisfied from her uncontroverted evidence that the said contribution is at the ratio of 70% to 30% and I now hereby so find.

27. In this regard therefore, I enter judgement for the Applicant and against the Respondent as follows;

- i. A declaration is now and hereby issued declaring that the Applicant/plaintiff is entitled to a share of the properties (movable and immovable) acquired by the plaintiff prior to and/or during the subsistence of their marriage at the ratio of 70% of the total value of all the said properties as against the Respondent’s share of 30% and further that the Respondent holds title, interest, ownership and/or possession of the said properties in trust for the plaintiff/Applicant in their respective shares as the legal owners and cestui que trust respectively namely:
  - a. 1.7 Acres comprised in L.R NO. Turbo East / Leseru Block 6 (Kamagut)/43 being the matrimonial home.
  - b. Motor vehicle registration no. KBJ xxxG, Toyota Corolla.



- c. House-hold items and all other properties acquired during the subsistence of the marriage and personal effects full details whereof are well within the Respondent's knowledge.
- ii. An order do issue directing that all the above mentioned matrimonial properties and including the household items be shared according to the contribution ratio of 70:30.
- ii. That an order of permanent injunction be and is now hereby issued restraining the Respondent by himself, his servants, agents and/or employees from interfering with the plaintiff's lawful enjoyment and quiet possession of the properties awarded to her.
- ii. The Respondent is to pay costs of this summons and interest at court rates.

**READ DATED AND SIGNED AT ELDORET ON 18<sup>TH</sup> DECEMBER 2024**

**E.OMINDE**

**JUDGE**

