



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**MNG v JGK (Matrimonial Cause 4 of 2019)
[2023] KEHC 1156 (KLR) (26 January 2023) (Judgment)**

Neutral citation: [2023] KEHC 1156 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MATRIMONIAL CAUSE 4 OF 2019
HK CHEMITEI, J
JANUARY 26, 2023**

BETWEEN

MNG PLAINTIFF

AND

JGK DEFENDANT

JUDGMENT

1. In her Originating Summons dated July 29, 2019 the plaintiff prayed for the following orders;

- (i) That the court be pleased to issue a declaration that the following properties were acquired by joint funds and efforts of the parties during coverture and are therefore jointly owned by the said parties, namely,
 - (a) Solai /Arutani Block xx/xxxx
 - (b) Solai /Arutani Block xx/xxxx
 - (c) Solai/Arutani Block xx/xxxx
 - (d) Loc 19 /Gacharageini/xxxx
 - (e) Akuisi Farmers Company Limited Plots Numbers xxxx,xxxx and xxxx.
- (ii) The court to order that the said properties be shared equally between the plaintiff and the defendant and if any of the properties have been sold the plaintiff be compensated to the extent of her due share.



- (iii) The defendant be restrained from alienating, selling, leasing, disposing, transferring or in any way interfering with any of the properties owned jointly by the plaintiff and the defendant being the subject of this suit.
 - (iv) The court be pleased to make a declaration that the defendant held 50% of the properties in trust for the beneficial use of the plaintiff.
 - (v) That the defendant transfers at his own costs and expense proportions of said properties to the applicant.
2. The plaintiff prayed for the costs of the suit as well.
3. The defendant filed his defence in a form of the replying affidavit sworn on November 1, 2019 in which he admitted some of the issues raised by the plaintiff while denying others. He admitted for example that there was a decree nisi dissolving the marriage between the two of them. He denied however that he had disposed some of the properties without the plaintiff's consent and that most if not all the properties had been transferred to their nine children. He also denied the plaintiff's participation in the acquisition of the properties.
4. When the matter came up for directions the court ordered the same to be heard by way of viva voce evidence.
5. The plaintiff testified and adopted her statement on record. She basically stated that the properties which she acquired with the defendant were done so when their marriage was subsisting. Unfortunately, in the pendency of the marriage they had issues which led her to divorce the defendant. The properties however were acquired jointly and she was entitled to half the share.
6. He accused the defendant of disposing some of them without her consent and transferring to other third parties. She went on to state that they did joint business as together and managed to purchase the said properties.
7. She acknowledges that the defendant had transferred some of the properties to their children including where the matrimonial home is situated. She said however that there was no property registered in her name.
8. The defendant equally testified and denied that he had side-lined the plaintiff or sold some of the assets. He said that he had acquired singlehandedly the properties and that the plaintiff had nothing to do with it.
9. He further consented that he had transferred some of the properties to the children although some had decided to sell them. The plaintiff, he went on, was being maintained by their children after divorcing him.
10. Both of them did not call any witnesses.

Analysis and determination

11. The court has perused the pleadings on record, and the evidence as tendered by the parties. What is not disputed is that the two now very old parties in the cause of their marriage developed irreconcilable differences which led to the plaintiff filing for divorce which was duly granted.
12. Secondly they acquired properties during the said marriage. There was no dispute that literally all of them were registered in the name of the defendant. Although there was no evidence of a joint purchase, I have no doubt in my mind that the parties in one way or another contributed to their acquisition.



None of them produce any documentary evidence but clearly right from when they married in 1957 till 2019, they must have jointly worked hard to get them.

13. There was no evidence to show what property was acquired before marriage as anticipated by section 9 of the *Matrimonial Property Act* 2013. Although the defendant vainly suggested so, he never produced any evidence. The plaintiff said in passing that she sold some land and purchased a motor vehicle which was in control of the defendant and which helped them acquire the parcels. Again there was no tangible documentary evidence or an independent witness to this.
14. In this regard, the court shall rely on section 14 of the *Matrimonial Property Act* 2013 which states that;

“Presumptions as to property acquired during marriage

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.”
15. Consequently, this court presumes that whatever was acquired during their marriage although in the defendant’s name were acquired jointly and ought to be shared equally.
16. The next issue considering the admission by the parties that most of the parcels of land had been transferred by the defendant to their children is what is now left for determination. I have perused the documentary evidence on record and it appears there are only two parcels in the name of the defendant, namely Solai/Arutani Block xx/xxxx and xxxx.
17. The parties did not furnish this court with any other outstanding land registered in the name of the defendant. The defendant equally although from his advanced age was not very certain if any was still pending.
18. This court takes into account the contributions of each party whether monetary or not. I think that was the spirit behind the framers of the *Matrimonial Causes Act* 2013. Each case has to be considered on its own merit as marriages and acquisition of properties differ from each marriage.
19. In this regard, I hold that the plaintiff and the defendant jointly and equally contributed to the acquisition of the two remaining properties still in the name of the defendant. The court wishes not to touch the already alienated properties as it has no capacity to do so since they are already in the names of their children or third parties who are not parties to this cause.
20. In any case both the plaintiff and the defendant seemed not to have much issues with the transfer of this parcels made to their children.
21. In the premises, the court has demonstrated that the plaintiff’s claim is meritorious and it is allowed as hereunder.
 - (a) Land parcels number Solai/Arutani Block xx/xxxx and xxxx were jointly acquired by both the plaintiff and the defendant.



- (b) The above (a) two properties be shared equally between the plaintiff and the defendant and the conveyancing costs if any shall be shared equally.
- (c) Pending compliance with (b) above the defendant is hereby permanently restrained by means of a permanent injunction from selling, transferring, leasing or in any way parting with the above parcels of land.
- (d) Each party shall meet their respective costs.

DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 26TH DAY OF JANUARY 2023.

H. K. CHEMITEI

JUDGE

