



**LMM v MKP (Matrimonial Case 5 of 2018)
[2023] KEHC 1081 (KLR) (23 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1081 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MATRIMONIAL CASE 5 OF 2018
MM KASANGO, J
FEBRUARY 23, 2023**

BETWEEN

LMM APPLICANT

AND

MKP RESPONDENT

JUDGMENT

1. LMM (the wife) was married to MKP on December 11, 1976. They separated after 28 years of marriage having been blessed with four children who are now adults. The wife has filed an originating summons dated June 25, 2020 seeking for declaration that two properties (which I shall refer to as 4485 and 4486) registered in the husband's name are matrimonial property and further that an order be made transferring those two properties into the wife's name.
2. The husband did not attend the hearing of the originating summons. The hearing proceeded ex parte.
3. The evidence adduced by the wife, which is in line with her depositions in her affidavit is that after marriage she and the husband resided at Riruta Satellite. In 1982 they moved to Githunguri on the husband's ancestral land. They built a matrimonial home thereon. The wife opened a shop in Githunguri as well as engaged in farming. She also operated a business of selling cooking gas in Zimmerman. That the husband sold three immovable properties without sharing the proceeds with the wife. That the husband following his inheritance of the ancestral property subdivided the same into properties 4485 and 4486. That their matrimonial home is situated on one of those portions of properties. It is those two properties she seeks be transferred into her name.

Discussion

4. The parties marriage was dissolved on 5th November, 2021. They were married in 1976 but separated in the year 2004 after 28 years of marriage. By the time of their separation all the children were adults. The oldest was 30 years while the youngest was 22 years old.



5. In respect to the property Gatamaiyu/kemburu/2903 and the documentary evidence before court shows that the property was acquired by the husband in the year 2012 and he transferred it to someone else in the year 2018. The wife did not adduce evidence showing how she contributed to the acquisition of that property which was brought when she and the husband had separated. That property therefore cannot be the subject of *Matrimonial Property Act*.
6. The property Gatamaiyu/kagaa/6 is not registered in the name of the husband and therefore cannot be considered in this matter.
7. Property Githunguri/githunguri/3515, according to the evidence of the wife is the husband's ancestral land. She stated that the husband inherited it from his father. The name of that father was not disclosed in evidence before court. The green card of that property however shows that on 17th July, 2012 that property was registered in the names of Josphat Mwaura Kaniu and Jackson Maina Kaniu. On 20th July, 2012 the property was registered in the name of the husband. On 16th May, 2018 the title was closed on sub-division of Nos. 4485 and 4486. These later properties are the ones that the wife seeks they be registered in her name.
8. It will be recalled that the couple separated in the year 2004. All the properties the subject of this action, were acquired after the said separation. There is no concrete evidence to show that the alleged business of the wife, which were not proved at all, contributed to the acquisition of the properties she now seeks to acquire through this action. The wife failed to prove her case on her claim since she did not provide evidence of direct or indirect contribution to acquisition of those properties.
9. The Supreme Court in the case of *Joo v. Mbo; Federation of Women Lawyers (Intended Interested Party); Law Society of Kenya & 3 others (Amicus Curiae)*(2021) eKLR held that a party to a marriage had to prove direct or indirect financial contribution to acquisition of a matrimonial property. The Supreme Court in that stated:-

“(77) We further note that the Court in Echaria was of the view that where the disputed property is not registered in the joint names of the parties to the marriage, but is registered in the name of one spouse, the beneficial share of each spouse would ultimately depend on their proven respective financial contributions, either directly or indirectly in the acquisition of the property. The court in Echaria then went on to find that for a wife to be entitled to a share of the property that is registered in the husband's name, she had to prove contribution towards acquisition of that property.

(78) To our minds, the finding in Echaria, was essentially that a spouse does not acquire any beneficial interest in matrimonial property by fact of being married only and that specific contribution has to be ascertained to entitle such a spouse to a specific share of the property...

(83) The guiding principle, again, should be that apportionment and division of matrimonial property may only be done where parties fulfill their obligation of proving what they are entitled to by way of contribution. We thus approve the finding in Echaria that: -

“As the case law currently shows, the status of the marriage does not solely entitle a spouse to a beneficial interest in the property registered in the name of the other, nor is the performance of



domestic duties. Even the fact that the wife was economical in spending on housekeeping will not do...”

10. It follows from the above discussion that this claim fails.

Disposition

11. The final orders in this judgment is that:-

- a. This case is dismissed.
- b. There shall be no orders as to costs.

12. Orders accordingly.

JUDGMENT DATED and DELIVERED at KIAMBU this 23rd day of FEBRUARY, 2023.

MARY KASANGO

JUDGE

Coram:

Court Assistant: Mourice /Julia

For Paul Ndungu: Njoroge Kugwa advocates:-

Instructed by G.W. Wainaina & Co. Advocates for the applicant: Mr. Wambu

Instructed by Gikenya Mugo & Rienye Advocates for the defendant:- No appearance.

COURT

Judgment delivered virtually.

MARY KASANGO

JUDGE

