



REPUBLIC OF KENYA



**KENYA LAW**  
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**SMM v MWN (Matrimonial Case E002 of 2020)  
[2023] KEHC 1091 (KLR) (23 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1091 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
MATRIMONIAL CASE E002 OF 2020  
MM KASANGO, J  
FEBRUARY 23, 2023**

**BETWEEN**

**SMM ..... APPLICANT**

**AND**

**MWN ..... RESPONDENT**

**JUDGMENT**

1. The plaintiff, (the husband) filed the present action seeking the properties acquired by the joint funds and effort of both his wife and himself are jointly owned by him and the wife (the defendant).
2. Background of this matter is that the couple were blessed with two children born 1991 and 1998 respectively. The couple solemnized their marriage in a church ceremony on December 3, 2000. In the year 2001 the plaintiff relocated to the United States. He did send funds for the upkeep of his family and it is conceded by the defendant that he sent money to purchase the properties the subject of this action. According to the plaintiff, he desires to have some of those properties to be in the defendant's name because:-

“She is my wife (although now divorced). I feel I ought to give her by giving her equal of the properties. The help she gave me is to look after our children and she did a good job. She stayed at home and I was working. She used the money I sent to build a store at 156.”

3. The defendant although acknowledging that the plaintiff sent her money which she used to purchase the subject properties she however stated that she also contributed to their acquisitions by working as a tailor and even one time she was selling bananas.

**Discussion**

4. I have considered the evidence adduced and the parties submissions. The plaintiff prays for division of the matrimonial as follows:-



1. Plot ... 5/156: to plaintiff
2. Plot ... 6-2598 to plaintiff
3. Plot ... 5/1559 to defendant
4. Plot ... 8-2653 to defendant
5. The defendant's objection to that sub-division is that the plaintiff has another property namely Plot No 7/171 which he transferred to another lady. The defendant's contention is that although the said property and the transfer was carried out, it was done out to deny her the right to that property.
6. I have considered that submission. The fact is that the green card of that plot 7/171 is in the name of another person, not a party to this action. To deal with that property in this action would deny that registered owner the right to heard.
7. The defendant needed to file an action for determination that her spousal consent was not obtained when the property was transferred. Such action can only be entertained by the Environment and Land Court. This Court does not have that jurisdiction.
8. The plaintiff has acknowledged that the defendant made indirect contribution to the acquisition of the properties before court. Having made that concession, the issue of contribution is not before this Court. The Supreme Court in the case *Joo V. Mbo: Federation Of Women Lawyers (Intended Interested Party); Law Society Of Kenya & 3 Others (Amicus Curiae)* held that a party seeking distribution of matrimonial property must show direct or indirect contribution to acquisition of that property. It is useful to consider the Supreme Court's holding, as follows:-

“(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...”



9. The defendant did not show the extent of her indirect contribution to acquisition of matrimonial property. The plaintiff conceded the defendant looked after the children of the marriage while he was in USA. In my view, the proposal of the plaintiff on distribution of the property is fair when one considers it was he who sent the finances for the purchase of those properties and for the upkeep of his family.

### **DISPOSITION**

10. The final orders in this judgment is that:-
- a. Plot ... 5/1560
  - b. Plot ... phase 6-2598 - to the plaintiff
  - c. Plot ... 5/1559
  - d. Plot ... phase 8-2653 - to the defendants
  - e. There shall be no orders as to costs.

**JUDGMENT DATED AND DELIVERED AT KIAMBU THIS 23<sup>rd</sup> DAY OF FEBRUARY, 2023.**

**MARY KASANGO**

**JUDGE**

Coram:

Court Assistant: Mourice /Julia

Instructed by Ndungu Mwaura & Co. Advocates for the plaintiff:- Ms. Kiarie

Instructed by Philip Henry & Associates Advocates for the defendant:- Ms Mugo

**COURT**

**Judgment delivered virtually.**

**MARY KASANGO**

**JUDGE**

