



**AMM v CMM (Civil Case 20 of 2015)  
[2022] KEHC 10734 (KLR) (Family) (31 May 2022) (Judgment)**

Neutral citation: [2022] KEHC 10734 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
CIVIL CASE 20 OF 2015  
AO MUCHELULE, J  
MAY 31, 2022  
IN THE MATTER OF THE MATRIMONIAL  
PROPERTY ACT, 2013**

**BETWEEN**

**AMM ..... APPLICANT**

**AND**

**CMM ..... RESPONDENT**

**JUDGMENT**

1. The applicant AMM and the respondent CMM got married on November 3, 2000 at the Shrine of Mary Help of Christians at Don Bosco in Upper Hill in Nairobi. The marriage was blessed with four children. It was dissolved on April 22, 2014.
2. On June 19, 2003, the couple bought LR No Nairobi/Block 93/1522 measuring about 0.0163 Ha. It is situated in South B Estate along Mombasa Road. They built a five bed-roomed house in which they stayed until the applicant was evicted therefrom.
3. The applicant swore that she contributed to the purchase of the parcel, contributed towards the construction of the house, was largely responsible for the supervision of the construction and was responsible for the interior design. She further stated that she was responsible for the management of the home and taking care of the children. She had a law firm and the respondent was the general manager of Blue Shield Insurance Company. He was quite busy at his job and that is why she managed the home and supervised the construction. The construction was between 2003 and 2007. In 2007 the respondent lost his job, following which she was largely the source of income in the family.
4. The property was registered in their joint names.



5. The applicant produced evidence of payments towards the purchase of the plot, payments towards the construction of the house and other payments including fees. Her case was that her contribution to the acquisition and development of the property, both in monetary and non-monetary terms, was equal to that of the respondent.
6. The applicant filed this originating summons filed on January 26, 2015 for the declaration that the property was matrimonial property acquired and developed during their marriage; that the property was acquired and developed using joint funds; and that it was owned jointly by the two of them in equal shares. She asked that the property be divided equally between them and separate registration be done. In the alternative, the property be sold and the parties do equally share the proceeds.
7. The originating summons was served on the respondent who did not enter appearance or file a response. I accept the sworn evidence of the applicant.
8. Section 14 of the *Matrimonial Property Act*, No 49 of 2013 provides that:-

“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.”

The presumption in section 14 (b) was not rebutted, and therefore I hold that, owing to the joint registration of the property, the beneficial interests of the applicant and the respondent herein are equal.

9. Over and above the equal interests of the parties in the property, the applicant has demonstrated that she contributed to the acquisition and development of the same both financially and non-financially. In making this finding, I am alive to the definition of “contribution” in section 2 of the Act which states as follows:-

““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;”

10. Consequently, I allow the originating summons. I declare that LR No Nairobi/Block 93/1522 and all developments thereon is owned jointly, and was acquired and developed during the subsistence of their marriage. I declare that the applicant and the respondent jointly contributed towards the acquisition and development of the property, and that the contribution of each party was 50%. I order that the property be valued and sold and the proceeds shared equally between them. Either party shall be at liberty to buy out the other. The parties shall within 30 days agree on a valuer, failing which each will propose two valuers from which the court will pick one.



11. The parties shall equally meet the costs of valuation. If one meets the entire cost, the same shall be reimbursed during the sharing of the proceeds of sale.
12. Costs of the cause shall be borne by the respondent.

**DATED AND DELIVERED AT NAIROBI THIS 31<sup>ST</sup> DAY OF MAY, 2022.**

**A.O. MUCHELULE**

**JUDGE**

