



SWK v FK (Civil Suit 17 of 2017) [2022] KEHC 10615 (KLR) (Family) (30 May 2022) (Judgment)

Neutral citation: [2022] KEHC 10615 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL SUIT 17 OF 2017
AO MUCHELULE, J
MAY 30, 2022

BETWEEN

SWK APPLICANT

AND

FK RESPONDENT

JUDGMENT

1. The *Matrimonial Property Act*, No 49 of 2013 provides for the rights and responsibilities of spouses in relation to matrimonial property. It recognizes that married women have equal rights with married men. It provides a much clearer definition of matrimonial property, and provides for ownership of such property even where the parties are in a polygamous marriage. It expands the definition of contribution of the spouses towards the acquisition and/or development of matrimonial property. In short, the Act seeks to realise the provisions of article 45(3) of the *Constitution* that provides that:-

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

2. In section 6(1) of the Act, matrimonial property is defined to mean the matrimonial home or homes; household goods and effect in the matrimonial home or homes; and any other immovable and movable property jointly owned and acquired during the subsistence of the marriage. Section 14 of the Act acknowledges that such property may be registered in the name of one spouse, or may be registered in the joint names of the spouses. It is provided as follows:-

“14. 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.”

3. The *Matrimonial Property Act* provides that ownership of matrimonial property rests in the spouse according to the contribution of either spouse towards its acquisition as shall be divided between the spouses if they divorce or when the marriage is dissolved.
4. Section 2 of the Act provides that 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.”
5. Lastly, Section 9 of the Act states that:-

“Where one spouse acquires property before or during the marriage and the property acquired during the marriage does not become matrimonial property, but the other 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.”
6. It is against these provisions that the court will seek to determine this originating summons that the applicant SWK filed against the respondent FK on March 9, 2017. The couple contracted a civil marriage on July 19, 2011 but had begun cohabiting as married people in 2007. The marriage was blessed with two children. They separated in December 2016, and the marriage was dissolved vide CM Milimani Commercial Courts Divorce Cause No 388 of 2019.
7. The following property is the subject of the dispute between the applicant and the respondent, the applicant seeking that it be determined to be matrimonial property whose acquisition and/or development was jointly contributed to and therefore it be shared between them:-
 - a. shares in Taylor Scott International (K);
 - b. Plot No [particulars Withheld] JKUAT;
 - c. Plot No [particulars Withheld] JKUAT;
 - d. Plot [particulars Withheld] in Kariobangi South/Juakali Industries/Sector B;
 - e. LR No [particulars Withheld](IR 49796);
 - f. Plot No [particulars Withheld] in Kariobangi South/Jua Kali Industries/Sector B;
 - g. Plot No [particulars Withheld] in Kariobangi South/Jua Kali Industries/Sector B;
 - h. Plot No [particulars Withheld] in Kariobangi South/Jua Kali Industries/Sector B (inclusive of household goods); and
 - i. motor vehicle registration No [particulars Withheld] Toyota Land Cruiser.



8. It is not in dispute that when the couple began staying together they were each teaching in a university. They formed a business entity called “[particulars Withheld]” through which they were publishing books for sale and the proceeds would go into a joint account number [particulars Withheld] at Cooperative Bank. Proceeds from this joint account went into the purchase and/or development of family property. It is also not in dispute that they jointly bought shares in Taylor Scott Keyston Limited at Kshs 500,000. They agree that each goes away with 50% of the shares in this company.
9. It is not disputed that the applicant bought Plot No. [particulars Withheld] in Kariobangi South before she got married to the respondent. When they got married they used joint resources to develop it after transferring it into their joint names to be able to source for funding from, among other places, the bank. They developed a 4 storey residential building that has 19 self-contained 1 bedroom flats and 2 small shops. It has rental income of Kshs 130,000 per month. There is Plot No. [particulars Withheld] in Kariobangi South which the applicant states that she bought alone before the marriage. The respondent stated that he contributed towards its purchase. The Plot was, however, developed in the course of the marriage by joint funds. What was developed thereon was a 4 storey building comprising 18 self-contained 1 bedroom flats, 2 bedsitters and 2 small shops. The rental income is Kshs 140,000 per month.
10. There is no dispute that the couple agreed and got Plot No [particulars Withheld] Kariobangi South/Jua Kali Industries/Sector B to go to the applicant and the registration was done, and Plot No. [particulars Withheld] Kariobangi South/Jua Kali Industries/Sector B to go to the respondent and the registration was done. In the pleadings and written submissions, it was agreed that this arrangement should not be interfered with.
11. Plot No [particulars Withheld] JKUAT is held jointly by the parties. The respondent stated that he alone bought the property and produced bundle of receipts to that effect. The applicant’s evidence was that although the receipts show that the respondent paid for the Plot, she would give money to him to help in the purchase. On the basis that the parties did business together, held a joint account and the property was jointly registered, I find that the intention was that either party has an equal claim in the property.
12. There is Plot No [particulars Withheld] JKUAT . It is appreciated that it was the respondent who was a lecturer at JKUAT. He stated that he bought the property in 2010 for Kshs 750,000 and that was before the marriage; that the applicant made no contribution to the purchase. According to the applicant they began living together as husband and wife in 2007 and therefore in 2010 they were married. She stated that she contributed to the purchase. Unlike the respondent, she gave no evidence of the financial contribution. But I consider that contribution is beyond money. I determine that the respondent’s contribution was 70% and the applicant’s contribution was 30%.
13. The purchase of Plot No [particulars Withheld] Kariobangi South/Jua Kali Industries/Sector B was admitted as done by using funds from the joint account, although either party claims to have made cash transfer to the account to enable the purchase. The Plot was then developed by the construction of 23 one bedroomed self-contained houses and two small shops. The respondent stated that when the couple separated the construction was not completed. He had to take a loan of Kshs.1,800,000/= to complete the job. The property now fetches Kshs 120,000 a month. He sought that the property be valued, sold, and the proceeds shared in accordance with each party’s contribution. The applicant asked that the property be valued and, when sold, there be equal sharing of the proceeds. She stated that construction was completed in May/June 2017 and, since then, it has been on rent which has all gone to the respondent. The bit of rent going to the respondent since completion of the construction was not denied. I also note that the parties separated in December 2016 when the property’s construction



had not been completed. I determine that the respondent's share in the property shall be 60% and the applicant's shall be 40%.

14. It was common ground that Plot No [particulars Withheld] Kariobangi South/Jua Kali/Sector B and LR No [particulars Withheld] (IR 49796) be each shared equally between the applicant and the respondent.
15. There is vehicle registration number [particulars Withheld] Toyota Land Cruiser which the respondent has used since purchase when the couple was living together. He stated that he alone took a loan from a Sacco of Kshs 1,049,000 and a further loan of Kshs 1,200,000 to buy the car. The applicant claimed the proceeds to buy the vehicle came from the joint account and some of the money came from the sale of vehicle [particulars Withheld] in 2014, and that the sold vehicle was in her name and she produced copy of the logbook. The sale was at Kshs 850,000 she stated. I consider that this was a family vehicle which the respondent has exclusively used since separation in 2016. Considering that contribution is beyond money, I determine that the contribution of either party is 50% in vehicle's acquisition.
16. Similarly, I determine that the contribution of the applicant and the respondent in the purchase of the household goods, that were bought over a time, was 50% each.
17. Lastly, the loan of Kshs 2.1 million at the Cooperative Bank shall be borne equally by the parties.
18. In conclusion I make the following orders:-
 - a. the loan of Kshs 2.1 million at the Cooperative Bank shall be equally paid by the applicant and the respondent;
 - b. household goods shall be sold and each of the applicant and the respondent gets 50% of the proceeds;
 - c. vehicle [particulars Withheld] Toyota Land Cruiser shall be valued and sold so that the applicant gets 50% and the respondent gets 50%, with the option either party buying out the other;
 - d. Plot No. [particulars Withheld] Kariobangi South/Jua Kali Industries/Sector B and LR No [particulars Withheld] (IR 49796) shall each be valued and sold and proceeds shared equally, with a proviso that either party buys out the other;
 - e. Plot No [particulars Withheld]/Kariobangi South/Jua Kali Industries/Sector B shall be valued and the proceeds are shared so that the applicant gets 40% and the respondent 60%, with the option of either party buying out the other;
 - f. Plot No [particulars Withheld]/JKUAT (Wanachuo Investment Limited) shall be valued and sold so that the applicant gets 30% of the proceeds and the respondent 70% of the proceeds; with the option of one party buying out the other;
 - g. Plot No. [particulars Withheld]JKUAT shall be valued and sold and the proceeds shared equally, with either party being able to buy out the other;
 - h. Plot No. [particulars Withheld] Kariobangi South/Jua Kali Industries/Sector B and its developments shall wholly go to the applicant;
 - i. Plot No. [particulars Withheld] Kariobangi South/Jua Kali Industries/Sector B and its developments shall wholly go to the respondent; and



j. the shares in Taylor Scott Keyton shall be shared equally by the applicant and the respondent.

19. Given the facts of the case, I ask each party to bear own costs.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF MAY 2022.

A.O. MUCHELULE

JUDGE

