



**LBB v MWM (Civil Case 5 of 2019)**  
**[2022] KEHC 12442 (KLR) (Family) (30 June 2022) (Judgment)**

Neutral citation: [2022] KEHC 12442 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**  
**CIVIL CASE 5 OF 2019**  
**AO MUCHELULE, J**

**JUNE 30, 2022**

**(OS)**

**BETWEEN**

**LBB ..... APPLICANT**

**AND**

**MWM ..... RESPONDENT**

**JUDGMENT**

1. The applicant LBB and the respondent MW got married in 2004 under Luhya customary law. The marriage was blessed with two children: NN born on 24<sup>th</sup> June 2005 and NK born on 23<sup>rd</sup> November 2008. They separated on 15<sup>th</sup> October 2017, and on 30<sup>th</sup> September 2019 the marriage was dissolved in Divorce Cause No. 943 of 2018 at Milimani.
2. This amended Originating Summons dated 19<sup>th</sup> December 2019 and filed on 20<sup>th</sup> December 2019 seeks the following orders:-
  - “ 1) An order that the Applicant, having been lawfully married to the Respondent herein, is entitled to a declaration of her rights with respect to matrimonial property acquired and/or accumulated by the parties during matrimony;
  - 2) A declaration that the Applicant is entitled to at least half share of the parties’ matrimonial property described as subdivision No. MN/x/xxxxx, House No. 11 at Shree Enclave East Court estate in Mombasa Mainland North in Nyali acquired during the subsistence of the parties’ Marriage;
  - 3) A declaration that the Applicant is entitled to at least half share of the parties’ matrimonial property described as house number A1 at Riana Wood



Apartments built on L.R No. x/xxx along Maliim Juma Road, Off Denis Pritt Road Nairobi, acquired during the subsistence of the parties' marriage;

- 4) A declaration that the Applicant is the absolute owner of motor vehicle registration number KCA xxxC acquired during the subsistence of the marriage and gifted to the Applicant by the Respondent;
  - 5) Permanent injunction restraining the Respondent either by himself, agents, servants and/or employees from interfering with, trespassing onto and/or dealing with the Applicant's rights and/or interests over and in respect of the subject matrimonial properties declared and/or decreed rights in favour of the Applicant;
  - 6) An order that the following suit properties be subdivided and be shared equally between the applicant and the respondent:-
    - a) Subdivision No. MN/x/xxxxx, House No. xx at Shree Encalve East Court Estate in Mombasa Mainland North in Nyali; and
    - b) House No. A1 at Riana Wood Apartments built on LR No. x/xxx along Maalim Juma Road, Off Denis Pritt Road,
  - 7) Costs of the suit; and
  - 8) Any other orders that the court may deem fit and expedient to grant.”
3. The applicant's case is basically that during the subsistence of her marriage to the respondent they jointly acquired the following properties which became matrimonial properties:-
- a) a three bedroomed apartment located at Riana Woods Apartments, house No. A1 situate on LR No. x/xxx along Maalim Juma Road, Off Dennis Pritt Road, Nairobi;
  - b) a four bedroomed house at Shree Enclave East Court Estate in Mombasa Mainland North Nyali on an 1/8 of an acre on Sub-Division No. MN/x/xxxxx;
  - c. vehicle registration No. KBC xxxL;
  - d. vehicle registration No. KBC xxxD; and
  - e. vehicle registration No. KCA xxxC.
4. The applicant sought a declaration that she was the absolute owner of vehicle KCA xxxC which she states that the respondent had bought in the course of the marriage and gifted to her. As for the houses, she sought a declaration that she was entitled to at least half share in each.
5. Regarding the contribution to the acquisition of these properties, her case was contained in paragraphs 12, 13, and 14 of her supporting affidavit sworn on 19<sup>th</sup> December 2019 as follows:-
- “ 12. That during the material time of acquisition of the subject properties, I was in charge of the domestic work and management of our matrimonial home as evidenced by the respondent's engagements at work stations in places outside Nairobi. Attached herewith and marked “LBB-14” is a copy of affidavit statement sworn by the respondent confirming his work engagements in various places outside Nairobi.



13. That i was also in charge of the physical, emotional, spiritual, social and to some extent financial care of our two children while he was engaged in work assignments away from Nairobi as evidenced herein above.
14. That the respondent and I provided companionship to each other during the subsistence of our marriage. The respondent and I have since separated due to various reasons including the respondent's cruelty and I have subsequently filed a Divorce Petition Nairobi Chief Magistrate's Curt being Divorce Petition No. 943 of 2018 Linda Balinda Barasa -v- Michael Wangila Watii, which divorce petition has since been allowed and a certificate of making Decree Nisi Absolute issued. Attached herewith and marked "LBB 15" is a copy of the Certificate of Making Decree Nisi Absolute dated 30<sup>th</sup> September 2019."

In her further affidavit she stated that she made both monetary and non-monetary contribution.

6. The respondent opposed the cause. He admitted that the two houses were acquired during the subsistence of marriage, but denied that the applicant made any contribution, financial or otherwise. He stated that he had single handedly developed the Nyalı property after taking a loan, and that the applicant played no role at all. There is no dispute that the property at Riana Woods Apartments is on a charge from the Kenya Commercial Bank Limited to the respondent. He stated that he alone is paying for the property from his salary, and that he is not receiving any assistance from the applicant. The charge was executed on 9<sup>th</sup> March 2011 and was for Kshs.6,000,000/=. As for vehicle KCA xxxC, he stated that the vehicle belonged to Realest Limited. He agreed to buy it. He paid a deposit of Kshs.690,000/= leaving a balance of Kshs.730,000/= which remained unpaid. This was family vehicle, but that when the applicant deserted the matrimonial home she went away with it. He denied that this was a gift to the applicant. As for the vehicle KBC xxxL, he stated that he bought the vehicle for his use although it is still in the name of the owner as there is part of the purchase price he has not paid. The same is for vehicle KBC xxxD. The two vehicles are not yet in his name, although he is buying them.
7. The respondent stated that although the applicant earned as much as he did she never gave a cent towards the acquisition of the above properties, and neither did she contribute anything towards the payment of the children's fees or the running of the home. They had a house help whom he paid. He stated that the applicant had a children education benefit from her employer which she did not utilise. Her salary and money were kept as a secret, he said.
8. The applicant stated that she was the one paying for the insurance of vehicles KCA xxxC and KBC xxxD. However, the respondent explained that the applicant's employer has organised a cheaper vehicle insurance cover for its employees. He took advantage of it, but that he was the one paying for the covers and produced payment evidence to that effect.
9. There is no dispute that the Nyalı property is in the joint names of the applicant and the respondent. However, the respondent stated that the applicant made no contribution to the acquisition of the property.
10. Counsel for the applicant and for the respondent each filed written submissions regarding the matter. I have considered what each had to say.
11. The question as to whether the properties herein were matrimonial properties can be answered in reference to section 6(1) of the Matrimonial Property Act, 2013 which states as follows:-

“(1) For the purposes of this Act, matrimonial property means—



- (a) the matrimonial home or homes;
- (b) household goods and effects in the matrimonial home or homes;  
or
- (c) any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.”

The property was acquired during the subsistence of the marriage between the applicant and the respondent. They are immovable and movable properties. They constituted matrimonial properties.

12. The fact that they were matrimonial properties did not automatically mean that either party had a claim to them. This is because section 7 of the Act provides that:-

“Subject to section 6(3), ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition, and shall be divided between the spouses if they divorce or their marriage is otherwise dissolved.”

The applicant filed this case laying a claim to the properties. She has to establish that she contributed towards their acquisition. That contribution has to be monetary or non-monetary. Indeed section 2 of the Act defines contribution to mean monetary and non-monetary which 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.”

13. Although the applicant was employed and on a salary, she did not say how much, if at all, she raised financially towards the acquisition of the two houses or towards the purchase of the vehicles in question. The Riana Woods Apartment is being bought on a loan from the Kenya Commercial Bank Ltd and deductions are from the respondent’s salary. She gave no indication at all that she put in any money towards the Nyali House. It was the same for the vehicles’ purchase. For a spouse who was employed and earning as much as the respondent, her financial conduct was quite telling. When the respondent states that her finances were her secret, and that she paid nothing towards even the fees of their children and the upkeep of the home and family, that is believable. I will find that her contribution was limited to companionship, child care and overall supervision of the home. I consider that the home had a house help whom she was not paying.

14. The Nyali home was acquired and built by the respondent, and he registered it in the joint names. Section 14(b) of the Act states that where property is acquired during the marriage in the names of the spouses jointly, there shall be rebuttable presumption that the beneficial interest in the matrimonial property are equal. Although the respondent alone bought and developed the Nyali property, he deliberately got it registered in their joint names. I find that his intention was clear. They each will have an equal stake in the property. I determine that the applicant’s claim to the Nyali property was 50%. In reaching this decision, I have taken into consideration her non-monetary contribution.



15. The Riana Wood Apartment is still being bought by the respondent. Given what I have said in the foregoing, and noting the interest of the bank, I determine that the applicant made no contribution to the house. It will absolutely go to the respondent.
16. The same shall be for the three vehicles which the respondent was solely buying and which were yet to be transferred to his name.
17. The Nyali property shall be valued and sold and 50% of the proceeds shall go to the applicant, although either party shall be at liberty to pay off the other.
18. Each party shall pay own costs.

**DATED AND DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF JUNE 2022.**

**A.O. MUCHELULE**

**JUDGE**

