



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI FAMILY DIVISION

CIVIL SUIT NO. 18 OF 2012 (O.S)

IN THE MATTER OF DIVISION OF MATRIMONIAL PROPERTY

AND

IN THE MATTER OF SECTION 17 OF THE MARRIED WOMEN'S PROPERTY ACT (1882)(NOW REPEALED)

JNI.....PLAINTIFF

VERSUS

RMMDEFENDANT

JUDGMENT

1. On 2nd March, 2012 the Plaintiff herein filed an application via Originating Summons seeking the determination of the following:

a. A declaration that the properties (movable and immovable) listed herein with all buildings and developments thereon acquired, and developed by the joint funds and efforts of the Plaintiff and Defendant or in the name of S S Preparatory and/or S S Kindergarten and Day Care School, are owned jointly by the Plaintiff and the Defendant:

- i. Motor vehicle Reg. No. KBC [xxx] (Isuzu Bus/Coach 33 seater)
- ii. Motor vehicle Reg. No. KAA [xxxx] Isuzu Bus Coach 25 seater
- iii. Motor vehicle Reg. No. KAC [xxx] Mitsubishi Bus coach 25 seater
- iv. Motor vehicle Reg. No. KAL [xxxx] Nissan minibus
- v. Motor vehicle Reg. No. KZP [xxx] Nissan minibus
- vi. Motor vehicle Reg. No. KBA [xxxx] Mitsubishi Pajero S/Wagon
- vii. Motor vehicle Reg. No. KBH [xxxx] Toyota Ipsum S/Wagon
- viii. Motor vehicle Reg. No. KBQ [xxxx] Isuzu minibus
- ix. Motor vehicle Reg. No. KAZ [xxx] Nissan UD Minibus 51 seater
- x. Motor vehicle Reg. No. KBM [xxx] Toyota Kluger S/Wagon
- xi. Motor vehicle Reg. No. KAD Peugeot
- xii. Residential building and plot-Bendor Estate
- xiii. Plots Number 301, 302, 303, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 263 and 265 adjacent to S S Preparatory School

- xiv. Plot on which the boarding section sits and other plots within Block 15
- xv. Ithanga land (Proposed site for the secondary school)
- xvi. Commercial/residential property in Kenol town
- xvii. Kandara investment (at least 3 plots)
- xviii. Kahawa west
- xix. Muguga-Thika East
- xx. Del Monte Farm/Plot
- xxi. Ngoiwa Estate –Thika (at least 3 Plots)
- xxii. Proceeds held in accounts belonging to S S Preparatory and/or S S Kindergarten and Day Care School
- xxiii. Ecobank Thika a/c No. xxxxxxxxxxx
- xxiv. Family Bank – Thika a/c Nos. xxxxx
- xxv. Barclays Bank – Thika a/c No. xxxxxxx
- xxvi. Equity Bank Thika
- xxvii. Co-operative Bank – Thika a/c no. xxxxxxxxxxxxxxxxx
- xxviii. Household goods

b. A declaration that 50% or such other or higher proportion of the properties aforesaid, is held by the Defendant in trust and for the beneficial interest of the Plaintiff.

c. Whether the said properties should be shared equally and/or be sold and the net proceeds be shared equally between the Plaintiff and the Defendant or in such other manner as the Court may deem just.

d. Whether the joint ownership in respect of Thika L.R. No. Block xx/xxx should be severed and that the same be held by the parties herein as tenants in common.

e. Whether the said property ought to be sold and the proceeds be shared equally between the parties herein.

f. Whether the Deputy Registrar ought to be empowered to sign any documents that the Defendants may refuse to sign.

g. A declaration that Motor Vehicle bearing registration number KAL xxxx (Nissan Minibus), KZP xxx (Nissan Minibus), KBA xxxx (Mitsubishi Pajero S/Wagon) and KBH xxxx Toyota Ipsum S/Wagon registered in the name of the Defendant and sold by the Defendant were bought jointly by the Plaintiff and the Defendant and the Plaintiff is entitled to a share of the proceeds therefrom.

h. Whether the Defendant should be condemned to pay the costs of this Summons.

2. The Summons is supported by an Affidavit sworn by the Plaintiff and filed on 8th March, 2011 in which he stated that he and the Defendant were married on 7th April, 1990 under the African Christian Marriage and Divorce Act. The marriage bore two (2) issues, CI and WN born in the year 1990 and 1998 respectively as shown in their Birth Certificates.

3. The Plaintiff averred that during the subsistence of the marriage he was an Accountant and that during his period of active employment, he contributed both directly and indirectly to the family welfare and the acquisition of the suit properties. The Plaintiff averred that he contributed indirectly to the household by paying rent and taking care of hospital bills and school fees.

4. As regards his contribution to the suit properties, the Plaintiff contended that he initiated the registration process that led to the establishment of SS Kindergarten and Day Care School and obtained the Certificate of Registration in both the names of the Plaintiff and the Defendant on 6th January, 1995. He stated that he then sourced the property where the primary school was to be located and that the land was purchased by both parties.

5. The Plaintiff further outlined his contribution towards the development of the school by contracting an architect to design the proposed school, seeking approval from the local authorities for construction, purchasing building materials, supervising construction, sourcing for additional funds and designing, printing and purchasing of school stationary and teaching materials.

6. It is the Plaintiff's submission that on or about the 5th of July, 2004, he was served with a Court Order issued in *High Court Civil Suit No. 718 of 2004* wherein he was barred from entering the school and with that his source of income. He has since not returned to the school and claims that efforts to amicably resolve the dispute did not bear fruit, hence his prayers to this Court as enumerated above.

7. In his submissions, the Plaintiff cited the case of *Kivuitu v Kivuitu 1991 2 KAR 241 at page 248* where Omollo Ag JA (as he then was) ruled as follows:

“... where such a husband acquires property from his salary or business and registers it in the joint names of himself and his wife without specifying any proportions, the courts must take it that such property, being a family asset, is owned in equal shares. Where, however, such property is registered in the name of the husband alone then the wife would be, in my view, perfectly entitled to apply to the court under Section 17 of the Married Women's Property Act 1882, so that the court can determine her interest in the property and in that case, the court would have to assess the value to be put on the wife's non-monetary contribution.”

8. In response to the Summons, the Defendant swore a Replying Affidavit dated 30th March, 2012 and a Further Affidavit dated 4th May, 2015. The Defendant testified that she is a trained teacher by profession and that it was her dream to start a school. The Defendant stated that SS Kindergarten and Day Care School started from humble beginnings, however through her hard work she began the expansion process.

9. She contended that with the assistance of the Plaintiff, they purchased Thika L.R Block xx/xxx for Kshs. 500,000/= to which she asserts that she made substantial contribution. The Defendant then commenced the construction of the new school premises sometime in the year 2001 through financial and material support from friends, family, women group loans and bank loans advanced to her from various financial institutions.

10. It was the defendant's testimony that at the time of moving to the new school building, the Plaintiff had been very supportive and she therefore invited him to join her in the management of the school. However, their working relationship deteriorated and in early 2004 the Plaintiff locked her out of the management and running of the affairs of the school altogether.

11. The Defendant contended that she was prompted to file proceedings against the Plaintiff at the High Court in Nairobi in *HCC No. 718 of 2004* owing to his mismanagement of the SS Preparatory School she was granted an order of temporary injunction restraining the Plaintiff from, in any manner supplanting her and/or interfering with the management, running and operation of the school.

12. The Defendant contended that the parties later arrived at an agreement in a school management meeting held on 1st September, 2007 where the issue of ownership of the school was resolved to the effect that the school would be regarded as an investment for their children, CI and WN. It was further resolved that a motor vehicle would be purchased for the Plaintiff who would also receive a monthly allowance of Kshs. 30,000/=.

13. On whether the Court can distribute the property if at all, it was the Defendant's submission that the Plaintiff had played no role towards the purchase of the properties listed in the suit. Further, that all motor vehicles listed were school busses save for Motor vehicle Registration Number KBM xxxx Toyota Kluger s/wagon. The Defendant denied owning any property at Del Monte Farm or in Kahawa West.

14. It was the Defendant's submission that the burden of proof lies with the Plaintiff to demonstrate his contribution towards the acquisition of the assets listed and referred the court to the case of *Jennifer Nyambura Kamau v Humphrey Mbaka Nandi (2013) eKLR* where the Court stated as follows:

“We have considered the rival submissions on this point and state that Section 107 and 109 of the Evidence Act places the evidential burden upon the appellant to prove that the signature on these forms belong to the respondent. Section 107 of the Evidence Act provides that “whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.” Section 109 stipulates that the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence. If an expert witness was necessary, the evidential burden of proof was on the appellant to call the expert witness. The appellant did not discharge the burden and as Section 108 of the Evidence Act provides, the burden lies on that person who would fail if no evidence at all were given on either side.”

15. It was the Defendant's submission that SS Preparatory School was incorporated into a limited liability company on 12th June, 2009 and the Court therefore has no jurisdiction to grant the reliefs sought by the Plaintiff. Further, that to the extent that the shares of the company had not been made an issue for the determination of this Court by way of pleadings, the Court cannot pronounce itself on the same as it is trite law that parties are bound by pleadings.

16. The Defendant referred the Court to the case of *NNN v SNM (2017) eKLR* which quoted the decision made in the case *SNK v MSK & 5 Others (2015) eKLR* where the learned Judge made reference to the case of *Muthembwa v Muthembwa, Civil Appeal No. 263 of 2001*. In this case, the Court held that a trial Court in such proceedings had no jurisdiction to distribute properties registered in the name of a company in which the spouses were shareholders. The Court held as follows:

“If there are disputes between husband and wife as to their respective rights to the shares in a company registered in the name of one spouse, then the court, like in the case of any other property in dispute between husband and wife has power to ascertain the respective beneficial rights of husband and wife to the disputed shares. It can declare, like the learned C.A. did in this case, that one spouse holds a certain number of shares in trust for the other spouse. What the court cannot do under section 17 of the 1882 Act, like in respect of all other properties, is to order the transfer of the legal titles to property or in other words to pass proprietary interest from one spouse to the other.”

17. The Plaintiff filed further submissions dated 1st October, 2018 stating that by incorporating the school, the Defendant's intent was to defraud the Plaintiff and ensure that the plaintiff did not benefit in any manner. Counsel referred the Court to the case **NSSF v Ankhan Holding Limited and 2 Others HCC No. 268 of 2004** where the trial Judge quoted the case **Jones & Anor v Lipman & Anor** and held that there is a possibility that the Court could lift the veil off the face of the company.

Analysis and Determination

18. I have analyzed the pleadings, testimonies and the written submissions filed by the parties herein and have framed three main issues for determination namely:

- a. Whether the properties in question constitute matrimonial property.
- b. Whether the Plaintiff contributed towards the acquisition of the property.
- c. How the Court should distribute the matrimonial property if any.

19. To determine what forms matrimonial property and the mode of distribution, I examined the circumstances of the acquisition of each property. There are four personal motor vehicles listed in the Originating Summons. **Motor vehicle KAD Peugeot** is listed as item "k" in the Originating Summons. The Defendant clarified during examination in chief that the correct registration of the motor vehicle is KAE xxx and that it was a gift given to her by her aunt. The Defendant has since gifted it to the school chairman Mr. John Irungu. The Plaintiff has not demonstrated how he contributed to the purchase of this motor vehicle. My view is that this property being a gift solely to the Defendant does not form part of matrimonial property. (See **Civil Suit 39 of 2012 UMM v IMM [2014] eKLR**)

20. The second personal vehicle is **Motor vehicle Registration Number KBA 744Z Mitsubishi Pajero** which the Defendant avers she purchased after giving the Plaintiff her salon car Registration Number KAY xxxx as part of an agreement arrived at in a school management meeting held on 1st of September, 2007. The Plaintiff in his oral testimony stated that the Defendant had indeed transferred the motor vehicle into his names as part of their negotiations.

21. The third personal vehicle is listed in the Originating Summons as item "g" and is **motor vehicle Registration Number KBH xxxx Toyota Ipsum S/Wagon**. It was purchased by the Defendant after the parties had already separated. According to the Defendant's testimony in Court, the motor vehicle was too low, therefore she sold it and purchased motor vehicle Reg. No. KBM xxxx Toyota Kluger s/wagon, listed as item "j" in the Originating Summons.

22. The Defendant's current residence is on a plot at **Bendor Estate** with the parties' children. It was the Defendant's testimony that she began to build the home in 2004 after the Plaintiff had deserted their matrimonial home in a rental house at Makongeni and the landlord evicted her and the children. The Plaintiff has not lead any evidence to demonstrate how he contributed towards the purchase of the plot or the developments thereon, therefore it does not qualify as matrimonial property.

23. The **Commercial/residential property in Kenol town** was bought in 2006 after the parties had separated and is registered in the name of the parties' son. The **Kandara investment** (at least 3 plots) were purchased by the Defendant through shares and paid for by installments. The Share Certificate for the property is under the name of the parties' son. The Plaintiff has not shown his contribution towards their acquisition of all of these properties which were purchased after the parties herein had separated. Further, both properties are registered in the name of the parties' son and therefore do not qualify as matrimonial property.

24. The Plaintiff did not produce proof of the existence of any property in **Kahawa West** or at **Del Monte Farm**. The Defendant stated to the Court that she did not have any such property as alleged by the Plaintiff. The Court cannot therefore belabour this claim or make a determination thereon.

25. On the **Muguga-Thika East property** sits a nursery school which the Defendant told this Court is registered in her family's name, being her sister, her parents and her cousin. The Defendant revealed that her family had allowed her to build a school on their land and pay them rent. The Plaintiff on the other hand has listed it as one of the properties they bought during the subsistence of their marriage. It is however unclear when the school was built. The Defendant's share of the property therefore qualifies as matrimonial property.

26. **Ngoiwa Estate – Thika** (at least 3 Plots) were purchased by the Defendant in 2008 after the parties had already separated. The Defendant contended that the property was purchased through loans from women groups and her salary of Kshs. 50,000/= which she receives from the school.

27. The Plaintiff having not provided particulars of any items that he left behind, a determination on **household goods** cannot be made. It was the Defendant's testimony that in 2004 when the Plaintiff abandoned the matrimonial home, he took most of the household items including carpets, curtains, cutlery, the microwave and other electronics with him. It was her testimony that he only left a 14 inch television and an old fridge. It would be impracticable to expect these household goods left behind in 2004 to be still in existence fifteen (15) years down the line.

28. The remaining properties itemized in the Originating Summons are closely linked to and inextricably mixed with the property in the name of SS Preparatory School Company Limited, whose shareholding consists of the Defendant and the parties' son. I wish to address the issue of the acquisition of these properties first.

29. The Defendant stated in Court during examination in chief that she purchased **motor vehicle Registration Number KAA xxxx** Isuzu bus 25 seater and **motor vehicle registration number KAC xxxx** Mitsubishi bus 25 seater sometime in the year 2000 or 2001 without the

assistance of the Plaintiff. **Motor vehicle Registration Number KZP xxxx** Nissan minibus was the first motor vehicle that the Defendant purchased while **motor vehicle Registration Number KAL xxxx** Nissan Minibus was purchased by the school and later sold off by the Defendant as scrap because it developed mechanical problems immediately after purchase. The aforementioned vehicles were all purchased before 2004, while the parties to this suit were living together and in good terms. While the Defendant has asserted that she purchased the said motor vehicles without the assistance of the Plaintiff, she has not led any evidence to this effect.

30. Three motor vehicles were purchased for the school after the Parties herein had separated. It was the testimony of the Defendant that she purchased **Motor vehicle Registration Number KBC xxxx** Isuzu Bus Coach 33 seater through a bank loan and without the assistance of the Plaintiff. The motor vehicle is registered in the names of the Defendant and Co-operative Bank of Kenya Limited. **Motor vehicle Reg. No. KBQ xxxx** Isuzu minibus 51 seater is registered in the names of the SS Preparatory School Company and the Cooperative bank of Kenya. **Motor vehicle Reg. No. KAZ xxxx** Nissan Minibus was purchased by the Defendant after the parties had already separated and is still currently in use for transportation of children from the school.

31. **Plots Number 301, 302, 303, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 263 and 265** adjacent to SS Preparatory School comprise the school playground and were purchased by the Defendant after the parties had already separated. The **plot on which the boarding section sits and other plots within Block 15** were purchased by the Defendant in 2009 after the parties had separated. As regards **the Ithanga land** which is the proposed site for the secondary school, it was the Defendant's testimony that she started the secondary section on the property having built the facility with her son between the years 2012 and 2013.

32. The Plaintiff also contends that the proceeds held in the **bank accounts belonging to SS Preparatory and/or SS Kindergarten and Day Care School** form part of matrimonial property. The particulars of the bank accounts are as follows:

i. Ecobank Thika a/c No.xxxxxxxx.

ii. Family Bank – Thika a/c Nos.xxxxxx.

iii. Barclays Bank – Thika a/c No. xxxxxxx

iv. Equity Bank Thika.

v. Co-operative Bank – Thika a/c no. xxxxxxxxxxxxxxx

The Defendant submitted that SS Preparatory School was incorporated into a limited liability company on 12th June, 2009 and the Court therefore has no jurisdiction to grant the reliefs sought by the Plaintiff. The Defendant further submitted that to the extent that the shares of SS Preparatory School Limited have not been made an issue for determination by way of pleadings, the Court cannot pronounce itself on the same as it is trite law that parties are bound by their pleadings.

33. Indeed, as a general rule a court ought not to make pronouncement on issues not raised in the pleadings filed by parties. As was stated by the Court in the case of **Chalicha FCS Ltd v. Odhiambo & 9 Others [1987] KLR 182**:

“Cases must be decided on the issues on the record. The court has no power to make an order, unless by consent, which is outside the pleadings.”

Nevertheless, a court may base a decision on an unpleaded issue where it appears at the trial that the issue has been left to the court for decision. In the case of **Odd Jobs vs. Mubia [1970] EA 476**. Law, J.A (as he then was), at page 478 paragraph 9-11 had this to say:-

“On the point that a court has no jurisdiction to decree on an issue which has not been pleaded, the attitude adopted by this Court is not as strict as appears to be that of Courts in India. In East Africa the position is that a Court may allow evidence to be called and may base its decision on an unpleaded issue if it appears from the cause followed at the trial that the unpleaded issue has in fact been left to the court for decision...”

34. The issue of spouses seeking respective rights to shares registered in a company in the name of one of them was addressed in the case of **S.N.K. v M.S.K & 5 others (2015) eKLR R.N Nambuye, D.K Musinga and A.K Murgor JJA** held as follows:

“We believe that the above issue was exhaustively dealt with by this Court in Muthembwa v Muthembwa, Civil Appeal No. 74 of 2001 which was cited in Mereka v Mereka, Civil Appeal No. 236 of 2001 where the Court construed the jurisdiction under Section 17 of the MWPA as extending to shares in limited liability companies owned by the parties. The court however held that a trial court in such proceedings had no jurisdiction to distribute properties registered in the name of the company in which the spouses were shareholders. The court held:

“if there are disputes between husband and wife as to their respective rights to the shares in a company registered in the name of one spouse, then the court, like in the case of any other property in dispute between husband and wife has power to ascertain the respective beneficial rights of husband and wife to the disputed shares. It can declare, like the learned C.A did in this case, that one spouse holds a certain number of shares in trust for the other spouse. What the court cannot do under Section 17 of the 1882 Act, like in respect of all other properties, is to order the transfer of the legal titles to property or in other words to pass proprietary interest from one spouse to the other.”

35. It is not disputed that when SS Kindergarten and Day Care first came into existence in 1995, it was first registered in the names of both

parties. From the Affidavits filed by the Plaintiff and the supporting documents annexed thereto, it is clear that he also played a role in the purchase of the property where S S Preparatory School is now situated. The parcel of land upon which part of the school is situated was also purchased jointly by the Plaintiff and the Defendant.

36. As admitted by the Defendant through cross-examination, it was the Plaintiff who organized for the architectural plans for the school to be drawn and approved. Further, the Plaintiff also demonstrated his contribution towards the development of the school through: the purchase of building materials; supervision of construction; sourcing for additional funds; and in the management of the school.

37. In particular, the Plaintiff has demonstrated to this Court his direct contribution to the purchase and development of the school in the following manner:

- i. On 16th March, 1996 the Plaintiff took an overdraft facility with Kenya Commercial Bank – Ruiru to provide working capital for SS Kindergarten and Day Care School.
- ii. On 30th of August, 2000, jointly with the Defendant identified and purchased in their joint names the property known as L.R. NO. Thika/Block xx/xxxx (formerly known as L.R. NO. xxxx/xxxx) in Thika District on which part of the school stands for the sum of Kshs. 500,000/=
- iii. 21st Jan 2001, Plaintiff gave the Defendant a cheque for Kshs. 200,000/= towards the development of the school.
- iv. Applied for a loan from the Commercial Bank of Africa amounting to Kshs. 300,000 towards the development of the school.
- v. The Plaintiff purchased materials for construction of the school.
- vi. The Plaintiff borrowed loans from his family members which money was to be utilized towards the development of the school.

38. Based on the foregoing, it is evident that both parties had been working towards the growth and development of the school until 2004 before the Plaintiff deserted the matrimonial home. It is also quite clear that the Plaintiff and the Defendant were running the school as a family business before the Defendant, on 23rd June, 2004, registered the business name SS Preparatory School and in her sole name; and later on incorporated it as a limited liability company on 12th June, 2009.

39. In Mbugua –Vs- Mbugua [2001] 2 EA 445 at page 454, Visram J (as he then was) held as follows:

“It must be remembered that an application under section 17 of the Act deals with the property held by the husband and not that of third parties. Such an application cannot therefore, cover property owned by a limited liability company which is a separate entity. That is perfectly clear. At this point, it is opportune to ask whether an application under section 17 of the Act can cover shares of a party held in a limited liability company. The Respondent’s advocate argued that that cannot be the case. In this regard, he relied on the case of Mungai –Vs- Mungai [1995] LLR (CAK) (Kwach, Tunoi and Shah).....if shares are the property of the husband, what would prevent them from being the subject of an application under section 17 of the Act? In my view, shares in a limited liability company are subject to an application under section 17 of the Act notwithstanding the fact as to whether both parties are shareholders in that company or only one of them. In fact, although the decision of this court in the Mungai case (supra) was reversed by the Court of Appeal, a close reading of it reveals that it supports the proposition that shares in a limited liability company can be made a subject of an application under section 17 of the Act.”

40. The Court of Appeal in Civil Appeal 33 of 2014 PWK v JKG [2015] eKLR stated as follows:

“With respect, we are not ourselves persuaded that MUTHEMBWA –VS-MUTHEMBWA was to exactly that effect. Quite the opposite. The Court there held, and we respectfully agree, that where the property of the company had been mixed with the matrimonial property, Section 17 allowed the court to deal with the parties’ respective interests in the company as injustice might otherwise result, which, to our way of thinking, is a repudiation, in appropriate cases, of the sometimes unhelpful distinction between the parties as spouses as opposed to shareholders for purposes of Section 17 proceedings.”

41. During the hearing of this suit, the Plaintiff indicated that he was seeking half of the school’s worth based on a valuation conducted by Epic Consults Limited in 2009. The Defendant testified in Court that since she resigned from GW Primary School in 1994 and started the school, she has remained dedicated and determined to develop the school. The Defendant averred that it is she who nurtured the school from scratch and managed it on a daily basis, developing it into the institution it is today. She referred the Court to an email the Plaintiff had sent her on 22nd March, 2000 while he was stationed in Ghana for work. In the email, he states as follows:

“How is ss? I am sure you have a lot of children now. I understand you even have a school bus. Did you manage to get the building you wanted at the end of the go-down?”

42. It was the Defendant’s testimony that when the Plaintiff abandoned the matrimonial home in 2004, he left her solely responsible to raise and educate their two children. The Defendant further indicated that she undertook the financial responsibly of repaying a loan borrowed by the Plaintiff from the Commercial Bank of Africa when he defaulted in payments. The Plaintiff himself admitted during cross examination in Court that it was indeed the Defendant who had maintained and paid their children’s school fees from 2004. He further admitted that he had not participated in the development of the school since 2004 when the Defendant took out an injunction against him in **High Court Civil Suit No. 718 of 2004**.

43. The Defendant has submitted that the parties arrived at an agreement on 1st September, 2007 regarding the ownership of the school during a management meeting which was also attended by their son and the school Chairman. At the meeting, it was resolved as follows as regards the ownership of the school:

“SS preparatory school was/is identified as the school Director’s Contribution as an investment to their children, C I and W N who will take over when they become of age, however insignificant their contribution was.”

44. At the management meeting the parties further agreed to purchase a motor vehicle for the Plaintiff and give him a monthly allowance of Kshs. 30,000/=. The Plaintiff confirmed in Court that he had been receiving the allowance until September, 2015; and that he was given a car by the school, although the specifications of the car he received were not in accordance with their agreement. From the foregoing, it is evident that while the Plaintiff’s initial efforts and contribution in the school cannot go unnoticed, his entitlement is not equal to that of the Defendant.

Disposition:

45. Having taken into consideration the entirety of the evidence put forth in this case, as well as the applicable law, this Court makes the following determination regarding the division of matrimonial property:

- a. A declaration be and is hereby made that L.R. NO. Thika/Block xx/xxx (formerly known as L.R. NO. xxxx/xxxx) is the joint property of the Plaintiff and the Defendant in equal shares.
- b. The property known as L.R No. Thika/ Block xx/xxx which comprises part of SS preparatory School be valued by a valuer to be agreed by the two parties within the next sixty (60) days.
- c. Failure to agree on a valuer within sixty (60) days each party to appoint their own valuer at their own cost.
- d. The Defendant shall have the option of paying the Plaintiff 50% the value of this property.
- e. A declaration be and is hereby made that the Defendant holds the 600 shares in SSs Preparatory Company Ltd in trust for herself and the Defendant as they constitute matrimonial property.
- f. A declaration be and is hereby made that the Plaintiff’s interest in the above stated shares is 25% of the total value of the shares held by the Defendant in the company.
- g. The Muguga-Thika East property which comprises a nursery school be valued by a valuer to be agreed by the two parties within the next sixty (60) days with the Defendant having the option to pay the Plaintiff a quarter of the value of her share in this property.
- h. Each party to bear own costs.

It is so ordered.

SIGNED DATED and DELIVERED in open Court this 26th day of February, 2019.

.....

L. A. ACHODE

JUDGE

In the presence ofAdvocate for the Plaintiff

In the presence of.....Advocate for the Defendant