



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO.45 OF 2002 (O.S.)**

LUCY NJERI NGUYO.....PLAINTIFF/APPLICANT

VERSUS

GABRIEL NGUYO NGARI.....DEFENDANT/RESPONDENT

**RULING**

1. The proceedings herein relate to matrimonial property and are grounded on **Section 17** of the **Married Women's Property Act, 1882**. The Plaintiff, Lucy Njeri Nguyo by her Originating Summons dated 28<sup>th</sup> October 2002 and by her Affidavit in support sworn on the same day, has made the point that her marriage to the Defendant broke down beyond retrieval and that the following properties, allegedly acquired during the marriage should be shared equally between them;

- (i) **L.R. Kiambu Dagoretti.Kinoo/T.29** – worth about Kshs.3,504,000/-.
- (ii) **Kiambu/168/12 (Grant No.L.R. 54643)** worth about Kshs.2,500,000/-.
- (iii) **L.R. Dagoretti/Riruta/3119** worth about Kshs.3.500,000/-
- (iv) **L.R. Ndeiya/Nduma/T.557** worth about Kshs.200,000/-
- (v) **L.R. Kiambu/Karai/617** worth about Kshs.500,000/-
- (vi) **Motor Vehicle KAL 491 Subaru S/W** worth about Kshs.300,000/-
- (vii) **Motor vehicle KXA 862 Datsun Pick-Up** worth about Kshs.150,000/-
- (viii) **Kikuyu Town/158** worth about Kshs.2,500,000/-
- (ix) **Nyandarua/Oljoro Orok West/761** worth about Kshs.500,000/-
- (x) **Kiambu/Dagoretti/Kinoo/T.28** with all structures thereon worth Kshs.950,000/-
- (xi) **Thika Municipality/Block 2/610** worth about Kshs.250,000/-
- (xii) **Motor-vehicle No.KAG 586M Toyota Saloon,** worth about Kshs.250,000/-

2. It is also her case that she made direct and indirect contribution to the acquisition of the properties and she did so as follows;

**“(a) That she helped establish, run and manage a chain of bookshops all known as Kikuyu Bookshop situated in Kikuyu Town, on Jogoo Road and Kiserian Town. That she solely involved in the day to day running of these Bookshops from the time of their establishment in 1976 up to 1992 when she ventured into full time farming and left the running of the shop to her first born son. The Defendant joined the first born son in running the bookshops in 1994 when he lost his clerical job with Heinneman Distribution Company Ltd.**

**(b) She finished the purchase of land parcel L.R. No.168/13 (Grant No.L.R. 54643) and Nyandarua/Oljoro Orok West/761 by securing a loan from the bank and selling some of the poultry that she was keeping in the family farm.**

**(c) She bought L.R. Kikuyu Town/158 jointly with the Defendant and the same was registered in their company name Ngunje Enterprises Ltd in 1987.**

**(d) She participated in the negotiations attendant to the purchase of Thika Municipality/Block 11/610 as well as L.R. No. Kiambu/Karai/Karai/617 both of which were registered in the names of the Defendant in 1997 and 1983 respectively.**

**(e) During her marriage they jointly purchased Motor vehicles Registration Nos.KXA 862 Datsun Pick Up, KAG Toyota Corolla and KYE 306 Peugeot 504 Saloon.**

**(f) From the proceeds of the various family business ventures that is the bookshops and farming, they jointly negotiated and bought L.R. No. Nairobi/50418.**

**(g) Principally, from the income generated from farming and the bookshops all, the properties listed above were purchased and she played an equal role in all the ventures.**

3. In addition to the above, the Plaintiff has made the case that although she was the one who managed the farms, bookshop and rental houses, the Defendant controlled all the income generated therefrom and only gave her random allowances for upkeep of the family. That she is entitled to half of each of the properties as a result of her said contribution except as regards L.R.No.Kikuyu Town/158.

4. The Summons was amended on 19<sup>th</sup> December 2002 with the result that the following properties were added to the ones already listed above;

**(i) Dagoreti/Riruta/3119**

**(ii) Ndeiya/Nduma/T.557**

**(iii) Motor Vehicle Registration Number KAL 491N Subaru Leone.**

5. In his response as contained in a Replying Affidavit sworn on 19<sup>th</sup> November 2002, the Defendant aside from stating that the additional properties listed above were acquired and registered in the sole names of the Plaintiff, also deponed that;

**(i) L.R. No.Kikuyu Town/158 belongs to Ngunje Enterprises Ltd and not to him personally.**

**(ii) L.R. No.Nairobi/50418 (Grant 44775/9) has already been disposed off by way of sale.**

**(iii) Motor vehicle registration No.KYE 603 has similarly been sold and is unavailable to any party.**

6. Further, that (ii) and (iii) above were sold to develop (i) above and that they are both directors of Ngunje Enterprise Ltd, and entitled to the property known as Kikuyu Town/158 as Directors of the Company.

7. It is also the Defendant’s case that the Plaintiff failed to disclose that she gets income from title

No.Dagoretti/Kinoo/T.28 and should the properties be shared out equally between them, then the said property and others in her sole names should equally be shared out.

8. Later in the proceedings, parties were required to file Affidavits on evidence of how the properties were acquired and the Plaintiff's Affidavit was filed on 24<sup>th</sup> December 2007 while the Defendant's was filed on 26<sup>th</sup> May 2008. A further Affidavit was filed by the Plaintiff on 14<sup>th</sup> October 2009 and each testified before me and in summary, their evidence on the single issue of acquisition of the listed properties is as follows;

9. The Plaintiff stated that she got married to the Defendant in 1969 but they only acquired property after they had set up a bookshop in Kikuyu Township. That although she had previously worked as a Copy typist earning Kshs.5,000/-, she left employment to concentrate on the bookshop which had been set up in 1981 and she also sold farm produce to supplement the income from the bookshop.

10. She also stated that the bookshop was a success because of the way she managed it and she opened branches in Kiserian and Jogoo Road, Nairobi to tap into business opportunities availed by schools in those areas.

11. It is the Plaintiff's case that she was unaware that the Defendant had obtained any loan to purchase some of the properties listed above.

12. One other piece of evidence is important; the Plaintiff was categorical that the Defendant earned Kshs.12,233,70/- in 1991 and so had no capacity to acquire any large property solely, and depended on the bookshop returns and farm produce sales for additional money.

13. Regarding the property known as Dagoretti/Riruta/3119, it was her evidence that the same has rental houses constructed by her son, Charles Gaitho and his wife, Monica Gathoni and the rent is used to pay for a loan the two had used to purchase a house in Embakasi.

14. The Plaintiff's verbatim proposal on distribution of the Matrimonial property is as follows;

***“(a) Land parcels L.R. Nos. Kiambu/Dagoretti/Kinoo/T.28 & T.29 formed the matrimonial home from which the Defendant escaped from before he got married, and left for an unknown destination with his new wife.***

***The Plaintiff lives in a house built on these two properties which house sits on the two properties. The Plaintiff has lived here all her life. It is therefore only fair and just that the two properties be given to her. The Defendant concedes this in paragraphs 11 and 12 of the Affidavit of 29<sup>th</sup> October 2009.***

***(b) The Plaintiff also claims land parcel L.R. No.Kikuyu Township Plot No.158 as the Defendant is the one who has been collecting and receiving rent in respect of it to the exclusion of the Plaintiff though the same was obtained jointly by the effort of the Plaintiff as well.***

***(c) Land Parcel L.R. No.Kiambu/Karai/Karai/617 was bought by the efforts of both parties and registered in the names of the Defendant [and should be shared equally].***

***(d) Land Parcel L.R. No Dagoretti/Riruta/3119 was single handedly bought by the Plaintiff and all the developments thereon were and have been undertaken by her sons and the proceeds thereof are used to paying off her sons loan to NSSF for their houses in Nyayo Estate, Embakasi. The Plaintiff does not in anyway benefit from the rental proceeds as all the money goes to pay the loan. The parcel is in the names of the Plaintiff and it would be unfair and unjust to give it to the Defendant considering her sons' investments in it.***

***(e) That the Plaintiff is also entitled to land parcel L.R. No. Kiambu/168/13 (Grant No. IR 54643) and the reasons thereof are well enumerated in paragraph 18 of the Affidavit of the Plaintiff sworn on***

12<sup>th</sup> October 2009.

**(f) Motor vehicle registration No.KAL 491N Subaru is not in dispute as the Plaintiff has always had its custody and possession. It is actually her third leg considering that she has problems walking due to the bout of severe arthritis that had afflicted her earlier in life at the time when the Defendant was deserting the matrimonial home.**

***The Defendant has never claimed it and it should be given to the Plaintiff.”***

15. With the above in mind, the Defendant’s case is as follows;

16. That all the properties listed above were acquired solely by himself save that the Plaintiff contributed to the purchase of L.R. No. Kiambu/168/1 (Grant No.54603) but her contribution was only Kshs.670,000/- against his own contributions of Kshs.1,447,980/-.

17. Further, that he had used his salary, loans and profits from his businesses to acquire his properties and the Plaintiff had no contribution whatsoever. In his Affidavit aforesaid, he has detailed out the following disputed facts;

(i) That he purchased title No. Ndeiya/Karai/245 from one Kamau Karanja at a consideration of Kshs.6,000/-

(ii) Title No. L.R. No.6845/14 was purchased from Samuel Kibiku Karanja at the price of Kshs.82,000/-

(iii) L.R. No. Thika/Municipality Block 11/610 was allocated him by the Government of Kenya.

(iv) L.R. No.Kiambu/168/13 was purchased at Kshs.2,117,980/- from Adam Adan Jillo and Jane Wambui Adam. The Plaintiff contributed Kshs.670,000/-.

(v) L.R. No.Kikuyu Town/158 was purchased at Kshs.125,000/-.

(vi) He solely acquired L.R. No.Nyandarua/Oljoro Orok West/761.

(vii) He used loans and personal money to acquire title No.Kiambu Dagoretti/Kinoo T.29 (viii) Plot No.T.28 which neighbours T.29 was also purchased in the same manner.

(ix) L.R. No.6845/27 was sold and the proceeds used to develop L.R. No.Kikuyu Town/158 and to purchase motor vehicle registration No.KAL 491N Subaru Station Wagon.

(x) That he purchased L.R. No. Dagoretti/Riruta/3119 and registered it in the Plaintiff’s name.

(xi) Motor-vehicles KYE 303, KXA 562, KAG 586 M and KAL 491 N were all purchased by him solely, and that he took loans plus personal monies to do so.

18. That as regards the properties in issue, his verbatim proposal is as follows;

**“(1) That the properties registered in the sole name of the Respondent belong to him absolutely since the Applicant has not proven direct or indirect contribution towards their purchase.**

**(2) That L.R. No. Kiambu/68/13 was acquired through the joint efforts of the parties in this proportion.**

**Applicant                    Kshs.670,000/-**

**Respondent                Kshs.1,447,980/-**

***The parties should therefore share the property in that proportion***

***(3) That L.R. No.6845/27(IR.50418) (Embakasi) and Motor vehicle Reg.No.KYE 603 Peugeot 504 Saloon were disposed of before this suit was instituted and cannot therefore form the subject matter of the suit.***

***(4) That each party bears their own costs this being a matrimonial dispute.”***

19. I have read the Submissions by the Advocates for the parties and to my mind, two questions need to be answered;

(i) Has the Plaintiff established that she contributed to the purchase of the properties in issue and conversely, **is the Defendant’s response a credible one?**

(ii) If the answer to (i) above, in the affirmative, **should the properties be shared out as proposed by the Plaintiff?**

20. In answer to (i) above, I am aware of the decision in Echaria vs Echaria, C.A. No.75/2001 and the *ratio decindei* of it was that a spouse is only entitled to that part of matrimonial property which she can prove that she contributed to the acquisition of. The argument made was that the 50-50 rule enunciated in Kivuitu vs Kivuitu [1991] KAR 241 was limited to the circumstances of that case and that generally, a spouse claiming contribution must prove it and a resulting trust will not be easily imputed. I also agree with the decision of Maraga, J. in Manson vs Manson [2008] eKLR where he upheld the reasoning in Balfour vs Balfour [1919]2 K.B. 571 that in matters involving a husband and a wife, meticulous records may not be kept in a manner akin to commercial contracts or transactions. I will apply both principles to this case.

21. I say so because the Plaintiff has produced no document to show how much was being made in the bookshop that she was managing and also how much she was making from the sale of farm produce. The Defendant has however not denied that indeed the Plaintiff was managing the bookshop and farm while he worked away from home and it follows that she made money from those ventures. **If so, what properties were acquired from those activities?**

22. From evidence on record, it is clear to me that the Plaintiff’s argument that she raised money to buy most of the properties is supported by the Defendant’s own evidence that the Plaintiff was able to raise Kshs.670,000/- to purchase Kiambu/168/13. That money could only have come from the bookshop and farming businesses that she was undertaking. Similarly, it is agreed that Kikuyu Town/158 was purchased on account of the same ventures with likely contribution from the Defendant and the same is registered in the family company’s name. Other properties were certainly similarly purchased save the property in Thika which was allocated at no cost to the Defendant. Further, the Plaintiff has no serious claim to the properties in Karai, Ndeiya and Oljorok. Distribution as I shall shortly do, will be done with the above facts in mind.

23. In that regard, It is not in dispute that as regards motor-vehicles, the Plaintiff is currently in use of motor-vehicle registration No.KAL 491N, Subaru Leone and the Defendant has no serious issue with the same remaining in her hands. Motor-vehicle KAG 586M was bought by Anthony Githinji Nguyo and so it shall remain with the Defendant as the Plaintiff never contributed to it. He shall also retain motor-vehicle registration number KXA 862 and since KYE 306 has been sold, I shall make no Orders as regards it.

24. Turning to the land parcels in the Defendant’s names, land parcel No. Nairobi/504189 was sold during the subsistence of the marriage and so is unavailable for distribution at the moment. Land parcel No.Dagoretti/Riruta/3119 is in the Plaintiff’s name and so it shall remain and the Defendant shall retain Kiambu/Karai/617 and L.R. Kiambu/168/13 and L.R. Thika/Municipality Block II/610, as the latter was specifically allocated to him by the Government of Kenya and there is no evidence of any contribution by the Plaintiff. The Defendant shall also retain Ndeiya/Nduma/T.557 as well as Oljoro orok West/761 as

there is no evidence that the Plaintiff contributed to their purchase or that she has interest in them. Regarding title No.Kiambu/168/13, parties agree that it should be shared between them and so it is ordered, but in equal shares.

25. That leaves titles Nos.Kikuyu Town/158 and Dagoretti/Kinoo/T.28 and T.29. The Defendant conceded that the Plaintiff contributed to the acquisition of both and so to be fair to parties, since the Plaintiff still occupies it, let the Plaintiff retain the matrimonial home on T.28 and also continue the farming on T.29. The land in Kikuyu Township is a commercial building and in the names of Ngunje Enterprises Ltd. Let it be shared out in accordance with the **Companies Act**.

26. It can be seen that I have attempted to share the properties as reasonably as I can and as fairly as I can because I am satisfied that whereas the Defendant may have had loans and his salary to contribute and buy some of the properties, the Plaintiff used income from the bookshop and the farm to do so. Each is therefore equally entitled to most of them and I have shown why.

27. In the end therefore, I shall distribute the properties as follows;

- (i) *M/V KAL 491N – to the Plaintiff*
- (ii) *M/V KAG 586M – to the Defendant*
- (iii) *M/V KXA 862 – to the Defendant*
- (iv) *L.R. No.Dagoretti/Riruta/3119 – to the Plaintiff*
- (v) *L.R. No. Kiambu/Karai/617 – to the Defendant*
- (vi) *L.R. No. Kiambu/Karai/168/13 – to the Defendant*
- (vii) *L.R. No. Thika/Municipality Block II/610 – to the Defendant*
- (viii) *L.R. No. Ndeiya/Nduma/T.557 – to the Defendant*
- (ix) *L.R. No. Oljoro Orok West/761 – to the Defendant*
- (x) *L.R. No. Kiambu/168/13 – to the Parties in equal shares. The same to be valued and sold and any party can pay off the other party and retain the property.*
- (xi) *L.R. No. Dagoretti/Kinoo/T.28 and T.29 – to the Plaintiff*
- (xii) *L.R. No. Kikuyu Township/158 – registered in the names of Ngunje Enterprises Ltd. Division thereof in accordance with the Companies Act.*

28. Each party shall bear its own costs.

28. Orders accordingly.

**DATED, DELIVERED AND SIGNED AT NAIROBI THIS 16<sup>TH</sup> DAY OF MARCH, 2012**

**ISAAC LENAOLA**  
**JUDGE**

**CORAM**

ISAAC LENAOLA – JUDGE

Miron – Court Clerk

Mr. Ngala hold brief for Mr. Kaburu for Plaintiff

Miss Thingu hold brief for Mr. Ogutu for Respondent

**ORDER**

Judgment duly delivered.

**ISAAC LENAOLA**

**JUDGE**

**16/3/2012**