



REPUBLIC OF KENYA



**KENYA LAW**  
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**ASSL v ASMB alias ASM (Family Originating Summons 3 of 2018)  
[2025] KEHC 8480 (KLR) (21 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 8480 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
FAMILY ORIGINATING SUMMONS 3 OF 2018**

**G MUTAI, J**

**JANUARY 21, 2025**

**BETWEEN**

**ASSL ..... CLAIMANT**

**AND**

**ASMB ALIAS ASM ..... RESPONDENT**

**JUDGMENT**

1. The Claimant is the former wife of the Respondent. They got married on 13<sup>th</sup> January 1994 under Islamic law. Their union was blessed with six issues namely: -
  1. UB, son born on 17<sup>th</sup> November 1994;
  2. MB, son born on 19<sup>th</sup> January 1997;
  3. HB, son born on 8<sup>th</sup> May 2000;
  4. SB, a son born 13<sup>th</sup> May 2002;
  5. MBB, a son born on 20<sup>th</sup> August 2008; and
  6. TAB, a son born on 10<sup>th</sup> March 2012.
2. The union between the Claimant and the Respondent broke down. On 23<sup>rd</sup> January 2018, the Respondent pronounced “talaka” for the third time and demanded that the Claimant vacate the matrimonial home at the end of the obligatory “eddat” period. As per Islamic law, the said period was to lapse on 23<sup>rd</sup> April 2018.
3. Being apprehensive that she would be evicted at the end of the eddat period the Claimant filed the Originating Summons dated 21<sup>st</sup> March 2018 vide which she sought various reliefs. Most of the prayers



she sought were for temporary reliefs. Those that are live before the Court, and are the subject of this judgment are the following:-

- “6. That it be declared that the following property purchased in the name of the Respondent is owned jointly by the Applicant and the Respondent as the parties' matrimonial home:-
    - a. Land and house on Plot No Subdivision Number 5xxx, of Section 1, xxxx Mombasa, xxxx No. 12;
  7. That it be declared that the following properties registered in the name of the Respondent are owned jointly by the Applicant and the Respondent:-
    - (a) Flats Nos. xx and xxon plot No 3xxx/I/MN in Nyali Mombasa.
  - 8 .....
  9. That further, and in the alternative, and in the event that title and ownership in any of the suit properties have already been transferred in favour of any third party, a declaration does issue declaring the alleged sale null and void for want of spousal consent; and
  10. that all the costs of the suit be awarded to the Applicant.”
4. The grounds relied on were that the properties were acquired during coverture and that the Claimant contributed financially and non-financially to the acquisition and improvement of the same. Further, the property on Plot No Subdivision No. 57xxx, of section 1, xxxxxxx, Mombasa, was the matrimonial home. The Claimant averred that the Respondent had tried to evict her from their matrimonial home so that he could live there with his new wife and that he was violent, as evidenced by the recording in her possession.
  5. In his response, via a Replying Affidavit filed on 28<sup>th</sup> May 2018, the Respondent stated that the Claimant was no longer his wife, having divorced her for the third time on 24<sup>th</sup> January 2018. he denied that he was a neglectful parent and averred that he supported all the children contrary to what the Claimant averred. He accused the Claimant of neglecting the children and encouraging or allowing them to lack discipline or to be rude to him.
  6. The Respondent averred that he acquired the matrimonial home with the dues he got from the sale of his share in a company called Sabina Logistics.
  7. He denied that the Claimant contributed anything to the marriage. It was his contention that he would send money from time to the Claimant so that she would make payments on his behalf. She, he stated, was not in a position to make any financial contribution towards the purchase, repair or development of the house. He contended that as a Muslim woman, the Claimant had no obligation to the marriage. Such obligation was the sole responsibility of the husband.
  8. The Respondent averred that the Claimant could not take a loan without his knowledge as that would be contrary to the edicts of Islam and Arab/African customs. In any case, he argued no known relative of hers had informed him that he had extended a loan to her.
  9. Mr Balala argued that he loved his former wife and that he bought her a house in xxxx , in an apartment block called xxxxxxxx Apartment, Flat Number H5. He averred that he also supported her family from time to time single-handedly.



10. He denied that the Court had jurisdiction to determine this matter as the principle of sharing of matrimonial property or non-financial contribution does not apply under Islamic law.
11. The foregoing notwithstanding, it was denied that the Claimant made a non-monetary contribution towards the acquisition, development or improvement of the matrimonial home.
12. It was therefore denied that the orders sought could be issued.
13. With the leave of the Court the Respondent filed a counterclaim vide which he sought to have the xxxxxx Flat declared a matrimonial property. The Claimant, for her part, avers that the counterclaim is fatally defective as it was not supported by a verifying affidavit.
14. I must note at this point that the hearing and determination of this matter took a long time as there was an appeal against a decision of this Court delivered in 2018 on the admissibility of documents. The parties attempted an out-of-court settlement of the matter. Mediation efforts failed.
15. The matter proceeded by way of viva voce evidence. I shall state in brief the evidence of each party below.
16. In her testimony, the Claimant averred that she and the Respondent are 1<sup>st</sup> cousins. His father and her mother are a brother and a sister. They met in Yemen and got married there. They have six children, all born in Mombasa. The couple resided in Nyali during the marriage.
17. The Claimant testified that Maisonette No 12 on Plot No 57xxx/I/MN was purchased for the family by Mohamed and Tawfiq Balala, her brothers-in-law. She averred that she improved the house, redid the kitchen, repaired the kitchen cabinet and paid for the painting. She did this with the money her brother sent from Yemen. She stated that the Respondent contributed very little money for painting and payment of fundis.
18. Regarding Flat Nos. xx and xx on Plot No 3xxx/I/MN Nyali, the Claimant testified that these flats were given to the Respondent by his father. She stated that she made some improvements in one flat by improving the bathroom and installing sliding doors with a view to having it hired out. The other flat was not renovated and, according to her, was empty.
19. Ms Lardhi contended that the xxxxxx Flat was purchased by her with the money she got from her brother Fadhil. She stated that she got money from Yemen in several tranches, the first of which was in the sum of US\$150,000, which she brought herself, and US \$10,000.00, which was sent to her through Juba Express, a money transfer service that has since closed, US \$ 8,000.00 through money transfer and US 6,000.00 through Dahabshill. She, however, had no documentary evidence of these remittals.
20. The Claimant averred that she returned some money to the Respondent under duress so that he would not divorce her as a way of avoiding the shame of being divorced. It was her evidence that the money got wasted and was finished.
21. She denied that the xxxxxx Flat was brought with money from the Respondent. It was her testimony that the Respondent made no contribution at all. To her the flat belonged to her brother, Fadhil, and it was to him that all the proceeds accrued were sent.
22. The Claimant testified that contrary to the averments of the Respondent, she took care of the children almost singlehandedly as the Respondent enjoyed khat. She denied that the house chores were done by a house-help. She averred that she was a good woman, contrary to what the Respondent averred. She prayed that she be allowed to keep the house she was staying in while the Respondent could keep the two flats in Nyali that had been gifted to him by his father.



23. On 16<sup>th</sup> February 2024, the Respondent was allowed to amend his response to include a counterclaim. When the matter came up for hearing on 16<sup>th</sup> April 2024, the Claimant was allowed to produce the electronic recording of what was said to be an incidence of domestic violence.
24. The Claimant further testified that the Respondent beat her during the incident, recorded electronically until she had to go to the hospital. It was her testimony that all she had in life were her children. She stated that the xxxx house belonged to her brother and that she couldn't go there.
25. When cross-examined by Mr Muchuri, the Claimant stated that the audio recording was made by their son, Hud. She couldn't tell what phone he used or how the recording was transferred from the phone to the flash disc. When asked about her source of income she testified that she sells food to earn a living.
26. On the xxxx house, she stated that it was bought at Kes.5,650,000.00, which money came from her brother. The money was sent through hawala, while others were from her. She insisted that she came with US\$150,000 from Yemen. When questioned about this, she stated that she didn't make a declaration of the currency in her port of entry. She testified that she looked for the flat with the Respondent, and payments were made through the firm of Balala & Abeid Advocates' account.
27. Although she averred that her brother bought the property, she testified that he didn't want to be involved in litigation over the subject property. He could, however, come to testify if requested.
28. She testified that although the sale agreement had her name, the house belonged to her brother. It was her evidence that there was nothing wrong with her brother buying a property using her name. Such action, she reiterated, was not frowned upon in Islam, although she did admit that in Islam, a husband is supported to take care of his wife.
29. It was also her evidence that the house in xxxx is leased and that she collects rent, which is then sent to Yemen, to her brother through people going to Yemen. She, however, had no evidence of the transmission or any form of acknowledgement of such transactions by any of the parties involved.
30. Regarding Flats xx and xx, she testified that she was unaware of the loan that encumbered the said properties.
31. When re-examined by her counsel, she reiterated that she stayed at House No. 12 at the Promenade House with her children. The said house has four bedrooms. She reiterated that the xxxx house belonged to her brother.
32. The Respondent testified on 17<sup>th</sup> April 2024. In his testimony in Chief, he stated that it wasn't true that his cousin Fadhil sent money to the Claimant. He testified that he spoke to Fadhil. His said brother-in-law/cousin denied knowledge of the house in xxxx . It was his evidence that every time the Claimant travelled during coverture, she was always with him and the children. He averred that the money to buy the xxxx property came from local sources, from his business income, as he used to do clearing and forwarding. In his view, he made the deposit towards the acquisition of the house. The xxxx house was a gift from him to her.
33. He stated that it was not permitted under Islam for a wife to have dealings without the husband's knowledge.
34. The Respondent stated that US \$150,000.00 was about Kes.16,664,000.00 at the time it was alleged to have been sent. That, in his view, did not make sense as the house was purchased at Kes.6,500,000.00. In any case the balance of the purchase price was paid using rent receipts.



35. It was his evidence that the house at Promenade Estate was bought by him while the two flats near Voyager were gifts to him by his father. The said properties were under a trust until the loan was fully paid.
36. When cross-examined by Ms. Osino, the Respondent averred that mediation failed. He averred that the xxxx House was a gift by him to the Claimant, which, under Islam, he couldn't take back.
37. The Respondent testified that he was last in the house at Promenade Estate a long time ago. He was, however, paying the living expenses. He conceded that the relationship between him and the children was strained. He denied knowledge of the diagnosis made by Dr Omar Aly that their firstborn son suffered from borderline schizophrenia.
38. Mr Balala averred that the Promenade House was his and not a gift from his relatives.
39. Regarding the loan that encumbered the two flats, he stated that it was his brother who was paying the loan and not him. He didn't know how much was paid and what amount remained unpaid.
40. He insisted that as a husband, he ranked higher than his wife, who was above the children. He reiterated that he wanted the house back so that he could get out of the financial rut he was in.
41. Upon the conclusion of the hearing, the Court directed the parties to file written submissions. I shall refer to the submissions of the parties below.
42. The submissions of the Claimant are dated 7<sup>th</sup> August 2024. The Claimant, through her counsel, Ms Pauline Osino, restated the facts in the cause.
43. Counsel for the Claimant stated that the governing law was *the constitution* of Kenya, the International Convention on the Elimination of All Forms of Discrimination Against Women, the Universal Declaration on Human Rights, the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa and the Matrimonial Property, 2013.
44. Ms Osino identified five issues which, in her view, were for determination by this Court
  - I. Whether the counterclaim was competent?
  - II. Which law is applicable to this case?
  - III. What properties were matrimonial properties?
  - IV. Whether the Claimant made a contribution towards their purchase?
  - V. Who should pay the costs?
45. On the 1<sup>st</sup> issue, counsel submitted that the Respondents did not sign the verifying affidavit in support of the counterclaim. For that reason, the same was fatally defective and ought to be struck out. He relied on the case of Equitable Party & 2 others vs IEBC [2022]eKLR
  1. On the second issue. Ms Osino submitted that the applicable law was Article 45 (3) of *the Constitution* and *Matrimonial Property Act*. In her view, the Islamic law was inapplicable as the Claimant had opted to file the application for declarations in the High Court.
46. It was submitted that the land and house on Plot No 57xxx, section 1, xxxx and Flats xx and xx on Plot No 3xxx/I/MN in Nyali Mombasa were matrimonial properties.



47. Regarding contribution, it was averred that the Claimant made a contribution which was both monetary and non-monetary and that she took care of children. Consequently, she was entitled to shares in the said three properties.
48. On costs, it was urged that each party should bear her/his own costs.
49. The submissions of the Respondent are dated 20<sup>th</sup> September 2024.
50. The Respondent identified the issues coming up for determination as being
1. What is the governing law in these proceedings?
  2. Are the four properties the subject of litigation, and matrimonial properties subject to division?
51. On the 1<sup>st</sup> issue counsel for the Respondent averred that the governing law was Islamic Sharia law. Reference was made to section 3 of the [Matrimonial Property Act](#) 2013, which states that
- “a person who professes the Islamic faith may be governed by Islamic law in all matters relating to matrimonial property”
52. Regarding the 2<sup>nd</sup> issue, it was urged that Flats No. xx and xx were not matrimonial properties as they were held in trust. Reliance was placed on the provision of section 6(2) of the [Matrimonial Property Act](#). The properties were said to have been mortgaged to ABN Amro Bank (now Citibank NA) to secure a loan facility. It was denied that the Claimant contributed through renovation.
53. It was urged that xxxxxx Flats was bought by the Respondent and gifted to the wife. The Respondent’s counsel stated there was a paucity of evidence that any money was brought from Yemen.
54. In the circumstances, it was urged that xxxxxx Flat and Maisonette No 12 were matrimonial properties liable for division. In the circumstances counsel proposed that the Claimant take the xxxx property while the Respondent retained the Promenade House.
55. The fact the this is a matrimonial matter notwithstanding the Respondent prayed for costs. No justification was, however, provided to justify departure from the practice of the Family Court of not awarding costs in such matters unless there were exceptional circumstances.
56. I have considered the pleadings, the evidence of the parties and their written and oral submissions. I must now make my determination.
57. In my view, the issues in these matters are:-
1. What is the applicable law?
  2. Is there a proper counterclaim?
  3. Are the properties matrimonial properties?
  4. If so, how should they be divided?
  5. Who should bear the costs?
58. I shall look at each of these in turn in the succeeding paras of this judgment. But before doing so I must set out the applicable constitutional and statutory provisions that will guide this Court as it makes its determination.



59. As has already been stated, the parties got married on 13<sup>th</sup> January 1994. They divorced on 23<sup>rd</sup> January 2018 once the Respondent pronounced the third “talak.” All the properties of the subjects of these proceedings were acquired during the intervening period.
60. It is evident that the suit properties were acquired during coverture. Are they, therefore, matrimonial properties liable for division in these proceedings?
61. Article 45(3) of *the Constitution* of Kenya, 2010 states 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.”
62. Section 6(1) of the Matrimonial Properties Act, 2013 defines matrimonial property as being:-
- “(a) Matrimonial home or homes
- a. Household goods and effects in the matrimonial home or homes; or any other immovable and movable property jointly owned and acquired during the subsistence of the marriage”
63. The said section also provides in subsection (2) that:-
- “Despite subsection (1) trust property, including property held on trust under customary law, does not form part of the matrimonial property”
64. The latter provision is important for the reasons that shall become apparent in due course.
65. The mere fact that a property is matrimonial does not mean that is owned by the spouses equally. Section 7 of the Act provides that matrimonial properties are, subject to subsection 6(3), owned by the spouses in accordance with the contribution of each party towards its acquisition and that upon divorce or dissolution of the marriage, it shall be divided among them in the proportions consistent with their contribution.
66. I am in full agreement with what Kiage, JA, stated in P N N v Z W N [2017] eKLR that:-
- “To my mind, all that *the Constitution* declares is that marriage is a partnership of equals. No spouse is superior to the other. In those few words all forms of gender superiority-whether taking the form of open or subtle chauvinism, misogyny, violence, exploitation or the like have no place. They restate essentially the equal dignity and right of men and women within the marriage compact. It is not a case of master and servant. One is not to ride rough shod over the rights of the other. One is not to be a mere appendage covered into silence by the sheer might of the other flowing only from that other’s gender. The provision gives equal voice and is meant to actualize the voluntariness of marriage and to hold inviolate the liberty of the marital space. So in decision making; from what shall be had for dinner to how many children (if any) shall be borne, to where the family shall reside or invest-all the way to who shall have custody of children and who shall keep what in the unfortunate event of marital breakdown, the parties are equal in the eyes of the law.
- Does this marital equality recognized in *the Constitution* mean that matrimonial property should be divided equally? I do not think so. I take this view while beginning from the premise that all things being equal, and both parties having made equal effort towards the acquisition, preservation or improvement of family property, the process of determining



entitlement may lead to a distribution of 50:50 or thereabouts. That is not to say, however, that as a matter of doctrine or principle, equality of parties translates to equal proprietary entitlement.

The reality remains that when the ship of marriage hits the rocks, flounders and sinks, the sad, awful business of division and distribution of matrimonial property must be proceeded with on the basis of fairness and conscience, not a romantic clutching on to the 50:50 mantra. It is not a matter of mathematics merely as in the splitting of an orange in two for, as biblical Solomon of old found, justice does not get to be served by simply cutting up a contested object of love, ambition or desire into two equal parts. I would repeat what we said in FRANCIS NJOROGÉ vs. VIRGINIA WANJIKU NJOROGÉ, Nairobi Civil Appeal No. 179 of 2009;

“ ... a division of the property must be decided after weighing the peculiar circumstances of each case. As was stated by the Court of Appeal of Singapore in LOCK YENG FUN v CHUA HOCK CHYE [2007] SGCA 33;

‘It is axiomatic that the division of matrimonial property under Section 112 of the Act is not – and, by its very nature cannot be – a precise mathematical exercise’.”

I think that it would be surreal to suppose that *the Constitution* somehow converts the state of coverture into some sort of laissez-passer, a passport to fifty percent wealth regardless of what one does in that marriage. I cannot think of a more pernicious doctrine designed to convert otherwise honest people into gold-digging, sponsor-seeking, pleasure-loving and divorce-hoping brides and, alas, grooms. Industry, economy, effort, frugality, investment and all those principles that lead spouses to work together to improve the family fortunes stand in peril of abandonment were we to say *the Constitution* gives automatic half-share to a spouse whether or not he or she earns it. I do not think that getting married gives a spouse a free to cash cheque bearing the words “50 per cent.”

67. The *Matrimonial Property Act* states that spouses can have separate properties which they can dispose of, hold, or acquire as they wish. The foregoing notwithstanding a spouse who improves the other spouses separate non-matrimonial property acquires a beneficial interest in the separate non matrimonial property.
68. I must also point out that section 14 of the Act creates two presumptions in respect of matrimonial property acquired during marriage, to wit:-
  - a. That where it is acquired in the name of one spouse, there shall be a rebuttable presumption that the property is held in trust for the other spouse;
  - b. That where it is in the names of both spouses that the beneficial interests in the matrimonial property are equal.
  - c. The foregoing provisions of the law are consistent with what Article 45(3) of *the constitution* provides. The said provision states that
    - “ 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”
69. Having noted the foregoing provisions, I must now look at each of the five issues identified by the Claimant’s Counsel. I do so as this Court agrees that the issues she identified are the issues in dispute herein.



70. Did the Respondent adhere to Rule 14(1) and (2) of the Matrimonial Properties Rules, 2022? I have perused the documents filed in the CTS on 20<sup>th</sup> February 2024 at 17:06 pm. The Respondent, through his counsel's firm, filed a Counterclaim signed by his counsel and a verifying affidavit sworn by the Respondent before Kariuki Gathuthi Advocates on 19<sup>th</sup> February 2024. Although there could be arguments as to whether the way the counterclaim was filed strictly adhered to the provisions of the Rules, it is my view that the deviation, if it indeed there was one, was minor. In any case, it does not appear to have occasioned an injustice so as to justify the drastic remedies sought by the Claimant. Procedure must always be the handmaiden of substance and not its mistress.
71. What law governs this matter? Section 3 of the *Matrimonial Property Act* is quite clear regarding this issue. It provides that:-
- “A person who professes the Islamic faith may be governed by Islamic law in all matters relating to matrimonial property”.
72. Although the parties herein had a right to elect to be bound by Islamic law, they didn't take it up. They prosecuted their claim before the civil court. They may not now resile from their elections.
73. That being the case, the submissions regarding the applicable Islamic principles are of no help and are therefore disregarded.
74. Are the 4 properties matrimonial properties? I will look at each of them in turns below.
- Land and House on Plot No 57xxx, Section 1, xxxx, Maisonette No 12
75. It is common ground that the property is used by the family as the matrimonial home. Presently, the Claimant resides thereat with the children. The Claimant takes care of the issues of the marriage, 2 of whom are minors. From the evidence adduced it is evident that the Claimant contributed towards the maintenance of the house.
76. The Claimant appears to have brought up the children with little or no help from the Respondent. The Respondent appears to be quite distant from them, given the testimony he gave. This Court must, therefore, give proper weight to the homemaking duties of the Claimant.
77. In the circumstances of this case, I have no doubt that the said property is a matrimonial property. I find and hold that the Claimant has a 50% interest in the same and that it should be divided equally between them.
- Flat Nos xx and xx on Plot No 3xxx/I/MN in Nyali Mombasa
78. I have perused the Declaration of Trust in respect of the two properties. From the said document, the title documents in respect of the two properties are held in trust by Salim Mohamed Abdalla Balala (now deceased) pursuant to a declaration of trust dated 20<sup>th</sup> November 2000. In the said trust, it was declared that:-
- “The settlor declares that he has bestowed as a gift and holds such portion of the property specified in schedule is in trust for the several children referred to in schedule 1 hereto as tenants in common in the ratio of 2:1 for male: female save that the flats erected on the property are more specifically held in trust in such proportion as shall be set forth opposite the name of each child referred to in schedule is of this Deed and agrees that he will as soon as the property is discharged and at the request and cost of the Children assign/transfer the property to them and will at all times execute and do all such documents acts and things as



may be necessary to procure the appropriate registration or entry in the register to title to the property to give effect to any such transfer or dealing and thus formalizing the gift.”

79. It was averred that the properties under trust have not been discharged and that there is an existing charge with ABN Amro Bank (now Citibank NA).
80. Although these properties were gifted in trust to the Respondent during coverture, they are not matrimonial properties unless it is shown that the Claimant had carried out improvements thereon which would entitle her to a beneficial interest and the interest of the Respondent had crystallized. In my view, none of these were shown. The evidence of the Claimant that she made improvements to one of the two flats is uncorroborated. There is also no evidence that the properties had been discharged and transferred to the Respondent. In the circumstances, I am unable to agree that Flats No xx and xx are matrimonial properties.
81. For that reason, I find and hold that Flats xx and xx are not matrimonial properties.  
xxxxxx Flat No H5, 5<sup>th</sup> Floor, xxxx Seaview Properties
82. The Claimant avers that she bought the property with funds she got from her relatives in Yemen. According to her, the property belonged to her brother. She stated that the said house has been leased to tenants who pay rent. The rent proceeds, she averred, are sent to her brother in Yemen.
83. She claimed that she purchased it with funds she brought from Yemen, the first of which was either in the sum of US\$150,000 OR US\$50,000, whichever amount it was the Claimant would have been required to declare it at the port of entry to Kenya. She produced no declaration that could back up her testimony. Although she could have procured the attendance of the Yemeni brother, she did not do so.
84. The Claimant was unsure about the true purchase price of the property. This cast doubt on her entire evidence about the said property.
85. The said property was acquired during coverture. In my view, it is more likely than not that the property was jointly acquired by the parties. In the circumstances, I find and hold that the said property is a matrimonial property and that both parties have an equal interest in it.
86. What orders should then be issued?
87. I direct that the properties I have identified as being matrimonial properties be valued within 60 days of the date hereof by a valuer appointed jointly by the parties. If the parties are unable to identify a valuer acceptable to them within 30 days of the date hereof, then the valuation shall be done by the Government Valuer. In either case, the valuation must be completed within 60 days of the date hereof. These properties are:-
1. Land and house on Plot No 57xxx, Section 1, xxxx, Maisonette No. 12; and
  2. xxxxxx Flat No. H5, 5<sup>th</sup> Floor, xxxx Sea View Properties.
88. The Claimant and the Respondent are at liberty to agree on the apportionment of the said properties to each other. If they agree to this option, then the beneficiary of the higher-priced property shall pay the owner of the lower-priced property for the difference in values.
89. If the parties do not agree on apportionment within 90 days of the date hereof, then the two properties shall be sold by public auction, and the proceeds divided equally between the Claimant and the Respondent.
90. As this is a dispute between former spouses, each party shall bear her or his own costs.



91. Orders accordingly.

**DATED AND SIGNED AT MOMBASA THIS 21<sup>ST</sup> DAY OF JANUARY 2025. DELIVERED VIRTUALLY VIA MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

In the presence of:-

Ms Osino, for the Claimant;

Mr Muchiri, for the Respondent; and

Arthur - Court Assistant.

