



**GKO v BGK (Matrimonial Cause E025 of 2024)
[2025] KEHC 249 (KLR) (Family) (23 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 249 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MATRIMONIAL CAUSE E025 OF 2024
H NAMISI, J
JANUARY 23, 2025
IN THE MATTER OF DIVISION OF MATRIMONIAL PROPERTY
AND
IN THE MATTER OF THE MATRIMONIAL PROPERTY ACT, 2013**

BETWEEN

GKO PLAINTIFF

AND

BGK DEFENDANT

JUDGMENT

1. The Plaintiff filed Originating Summons dated 29 April 2024 seeking the following orders:
 - i. The property and/or parcel of land known as Mavoko Town Block 3/xxxxx situated in Mtataa Mitatini village in Kamulu, the property of Machakos County Government, together with buildings and improvements thereon herein after referred to as “the suit property” be declared as matrimonial property;
 - ii. A temporary injunction be issued restraining the Respondent, his servants and/or agents from alienating, wasting, damaging, collecting mesne profit, rent, disposing off and/or otherwise interfering with the above-mentioned title, properties/assets pending the hearing and the determination of the Application/Organizing Summons herein;
 - iii. It be declared that the suit property or properties listed with all the buildings and developments thereon acquired and developed by single and sole efforts of the Applicant during their marriage and registered in the name of the Applicant to be held in trust for the Applicant and the children;



- iv. It be declared that the Respondent does not have any single share in the title listed herein acquired by the sole efforts of the Applicant during their marriage and registered in the name of the Applicant;
 - v. An order does issue declaring that 100% share of the property be held in trust and for the beneficial interest of the Applicant and the children;
 - vi. This Honourable Court be pleased to make such further orders as interest of justice may require;
 - vii. Costs of the Summons herein be provided for
2. In her Supporting Affidavit, the Plaintiff avers that she got married to the Defendant in 1998 under customary law. Their union was blessed with five children. Following a divorce cause filed by the Plaintiff, their marriage was dissolved in December 2023.
 3. The Plaintiff averred that she solely acquired and/or developed the suit property which is registered in her name. Attached to the Affidavit is a copy of the Title Deed issued in March 2015 to the Plaintiff. She stated that she then embarked on developing the property and took out a loan from her employer, Ministry of Environment and Forestry, which funds were used to purchase material for construction of their matrimonial home. The Plaintiff attached copies of the Agreement for Sale and payment receipts, all bearing her name.
 4. The Plaintiff averred that she was forced to move out of their home, the suit property, due to violence meted upon her by the Defendant. That was in February 2021. Thereafter, she filed the divorce proceedings once reconciliation efforts failed. The Defendant moved into the home with another woman, but later vacated the house, leaving with key with a neighbour. The Plaintiff is, however, apprehensive of moving back into the house since the Defendant has threatened her.
 5. The Plaintiff filed a Bundle of Documents which included receipts from hardware stores for purchase of construction material, quotation for construction material and a Medical Report dated October 2019 indicating that the Plaintiff suffers from complete heart block.
 6. Despite being served on several occasions, the Defendant did not participate in these proceedings.

Analysis and Determination

7. Section 6 of the *Matrimonial Property Act* defines matrimonial property as:
 - (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
8. The suit property was acquired in 2015, during the subsistence of marriage between the Plaintiff and Defendant. The Plaintiff stated that the suit property acted as their matrimonial home. Therefore, for all intents and purposes, the suit property is matrimonial property.



9. Section 7 of the Act provides as follows:

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.

10. In this instance, the Plaintiff produced a copy of Decree Absolute. As such, this Court is clothed with the power to determine the issue of division of matrimonial property. In line with section 7, this matrimonial property vests in the parties according to their contribution.

11. It is the Plaintiff's case that she solely contributed towards the acquisition and development of the suit property. The Defendant did not participate in the proceedings, thus the evidence adduced by the Plaintiff in terms of receipts is uncontroverted.

12. After considering the evidence presented by the Plaintiff/Applicant, and in the absence of any evidence by the Defendant/Respondent to demonstrate his contribution, directly or indirectly, I draw the conclusion that the suit property was acquired and developed through the sole financial contribution of the Plaintiff/Applicant. Accordingly, I make the following orders:

- i. All that property known as Mavoko Town Block 3/xxxxx situated in Mtataa Mitatini Village, Machakos County is hereby declared to be the property of the Plaintiff/Applicant;
- ii. There are no orders as to costs.

DATED AND DELIVERED AT NAIROBI THIS 23 DAY OF JANUARY 2025

HELENE R. NAMISI

JUDGE

Delivered on virtual platform in the presence of:

Ms. Nyang for the Plaintiff/ Applicant

N/A for the Defendant/ Respondent

Libertine Achieng Court Assistant

