



REPUBLIC OF KENYA



KENYA LAW
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NNN v DKC (Civil Suit E081 of 2021)
[2025] KEHC 288 (KLR) (Civ) (23 January 2025) (Judgment)

Neutral citation: [2025] KEHC 288 (KLR)

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

CIVIL
CIVIL SUIT E081 OF 2021

HK CHEMITEI, J
JANUARY 23, 2025

BETWEEN

NNN PLAINTIFF

AND

DKC DEFENDANT

JUDGMENT

1. This Judgement relates to the Originating Summons dated 2nd November, 2021, filed by the Applicant NNN seeking for Orders that:-
 1. The Honourable Court be pleased to issue a declaration that all the underlisted properties (hereinafter referred to as “the suit properties”) which are registered in the names of the Defendant are matrimonial properties to wit:
 - a. Land Reference Number [Particulars Withheld] under certificate No.004 (Developed consisting of the matrimonial home).
 - b. Motor Vehicle Registration Number KBT 680X – Toyota Town Ace – Colour White.
 - c. Motor Cycle Registration Number KMEN 462A – Shineray – Colour Green.
 - d. M-Pesa business with a float worth Kshs. 74,000/= only.
 - e. Shop on the rented plot at Buru buru plot.
 - f. Livestock at our matrimonial home: 7 cows, two (2) claves, 23 goats, 13 hens, four (4) turkey ducks.
 - g. Household goods bought during the subsistence of the marriage.



2. The Honourable Court be pleased to issue an order restraining the Respondent himself, his agent, his servant or anyone acting on his behalf from selling, transferring, alienating or disposing of the suit properties pending the outcome of Milimani Chief Magistrate Divorce Cause No. E1158 of 2021.
 3. In the alternative to prayer 2, the Honourable Court be pleased to issue an order restraining the Respondent himself, his agent, his servant or anyone acting on his behalf from selling, transferring, alienating or disposing off the suit properties unless the same is done as per the orders of this Honourable Court.
 4. The Honourable Court be pleased to make such further orders as it may deem fit and just in the circumstances of this case.
 5. The costs of this Application be provided for.
2. When the matter came up for directions the court ordered that it be heard by way of *viva voce* evidence.
 3. The Plaintiff testified and relied on her statement and affidavit on record. She also called one witness to back up her case.
 4. She testified that her marriage of 17 years with the Defendant was eventually nullified by way of divorce and she produced a decree absolute to that effect.
 5. She said that during the coverture they were able to acquire some properties mentioned above. The parcel of land was purchased by the Defendant through some loan but she contributed for the same as well as the building of the home.
 6. She went on to state that she had some “kibanda” or kiosk where she ran some business and which contributed to the development of the home and the purchase of the motor vehicle.
 7. She said that it is the Defendant who chased her from the matrimonial home as well as selling the family livestock. She accused the Defendant of cruelty and chasing her from the matrimonial home and more so because she was childless after experiencing a miscarriage.
 8. She testified that she enrolled with Mwageya women group as well as KWFT and that whatever they had was through loans.
 9. PW2 DKN the uncle to the Plaintiff testified on her behalf. He said that both owned the properties jointly. That since they could not resolve the matter at the chief’s office which concerned the properties the chief advised them to go to court.
 10. DW1 VNC, the mother to the Defendant testified that she did not know the investments of her son since they stayed with them for five years only. She said that she did not know how they acquired the land.
 11. DW2 the Defendant testified that when he married the Plaintiff, he was doing some farming and was working in construction sites. That he then opened the shops for the Plaintiff in 2005 although he had no control of it as she managed the accounts alone.
 12. He said that he bought land in 2007 from one NK after he secured a loan from SMEP micro finance. He said that he was a member of the said micro finance before he married the Plaintiff.
 13. The Defendant produced evidence to that effect. He said that he did not benefit from the said shop as he was never interested.



14. The motor cycle was the one which helped him in the construction business.
15. DW3 SM testified that he was with the Plaintiff in the same “chama” called Big Family and when cross examined, he said that he was not there when the properties were purchased especially the plot
16. The Applicant has filed written submissions dated 3rd September, 2024. The Respondent on the other hand did not file.

Analysis And Determination

17. I have carefully considered the suit herein, the responses thereto, the written submissions and find that the issues for determination are:-
18. Whether the suit properties constitute matrimonial properties:-
 - a. Section 6 of the *Matrimonial Property Act* No. 49 of 2013 describes matrimonial property to mean the matrimonial home or homes, household goods and effects in the matrimonial home or homes and any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.
19. Whether the applicant contributed towards the acquisition and the development of the matrimonial properties:-
 - a. Section 7 of the *Matrimonial Property Act* No. 49 of 2013 states that Subject to section 6(3), ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition [Emphasis mine] and shall be divided between the spouses if they divorce or their marriage is otherwise dissolved.
 - b. Section 8 of the *Matrimonial Property Act* No. 49 of 2013 states that where one spouse acquires property before or during the marriage and the property acquired during the marriage does not become matrimonial property, but the other spouse makes a contribution towards the improvement of the property, the spouse who makes a contribution acquires a beneficial interest in the property equal to the contribution made [Emphasis mine].
 - c. Whether the Applicant is entitled to an equal share or such higher proportion of the matrimonial properties:-
 - i. In *NGV v CNV also known as CHM* (Matrimonial Cause 6 of 2021) [2022] KEHC 16645 (KLR) (6 December 2022) (Judgment), at paragraphs 46 and 47, the court quoted with authority the case of *TMW v FMC* (2018) eKLR where the court adopted the definition under Section 6 of the Matrimonial Disputes Act No. 49 of 2013 to hold that for property to qualify as matrimonial property, it must have been acquired during the subsistence of marriage unless agreed by both parties that such property will not form part of the matrimonial property. The burden of proof in law lies with the party alleging that such and such property indeed was acquired during the subsistence of the marriage and therefore constitutes matrimonial property.

However, the mere fact that property is acquired during coverture does not automatically entitle each spouse or party a share after dissolution of the marriage. One has to prove contribution whether direct or indirect [Emphasis mine]. The onus of proof, however, is subject to a rebuttable presumption of law under Section 14 of '*Matrimonial Properties Act* which provides; “Where matrimonial property is acquired during marriage—(a) In the name of one spouse, there shall be a rebuttable presumption that the property is held in trust for the



other spouse; and(b) In the names of the spouses jointly, there shall be rebuttable presumption that their beneficial interests in the matrimonial property are equal.”

20. The Applicant has not provided any direct proof of her contribution to the acquisition of the matrimonial properties listed especially the land. The Respondent has provided proof of his loan repayment through Equity Bank statements and minutes and records of Hurlingham Njiru Self Help Group.
21. Its development however of the house was undertaken when the marriage was subsisting. Although they had marital difficulties there is no evidence to suggest that the Plaintiff did not contribute to its development especially the construction of the house which took according to the parties about seven years.
22. There was also the issue of the Plaintiff owning the kibanda or kiosk as well as the Mpesa shop. This was not denied by the Defendant and it is my view that in a way she participated in the family wealth.
23. This goes as well to the motor vehicle which later got an accident and was written off. There was no doubt that she participated in its acquisition.
24. The same goes to the mentioned livestock which the Defendant did not deny that he sold them when the Plaintiff moved away from the matrimonial home.
25. In this respect therefore and taking the above cited authorities I find that the Plaintiff in her own way contributed to the development of the matrimonial home. Despite the fact that they were not blessed with any issue that alone does not invalidate the fact that they lived as husband and wife.
26. In the premises I find that the Plaintiff's prayers cannot be wished away and I hold that she is entitled to 20% of the share in the matrimonial properties.
27. On the issue of the car and the motor cycle it appears to me that there was no evidence produced cogent enough for this court to issue any meaningful directions. The car, it was agreed, was written off after the accident.
28. The motor cycle for instance is used by the Defendant for his work at construction sites. There is no evidence of any claim by the Plaintiff.
29. There was no evidence of the livestock as they were allegedly sold as well as the Mpesa float of Kshs 74,000.
30. In my considered view therefore the only asset worth consideration is the property namely Kamulu Plot No 34/LR 126/330 Certificate No. 004. This should be divided in the ratio of 20% and 80% in favour of Plaintiff and Defendant respectively.

Conclusion

- (a) In conclusion the court directs that the same be valued by a professional valuer and the parties be at liberty to buy off each other. The ratio of 20% in favour of the Plaintiff and 80% in favour of the Defendant shall be applied.
- (b) The above exercise be undertaken within 90 days from the date hereof.
- (c) Each party shall meet its respective costs.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 23RD DAY OF JANUARY 2025.



H K CHEMITEI
JUDGE

