



REPUBLIC OF KENYA



**KENYA LAW**  
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**JWN v SMK (Matrimonial Cause 10 of 2019)  
[2025] KEHC 1184 (KLR) (14 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1184 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
MATRIMONIAL CAUSE 10 OF 2019**

**A MSHILA, J**

**FEBRUARY 14, 2025**

**IN THE MATTER OF THE MATRIMONIAL PROPERTY ACT OF 2013**

**BETWEEN**

**JWN ..... APPLICANT**

**AND**

**SMK ..... RESPONDENT**

**JUDGMENT**

1. JWN filed her Originating Summons dated 25<sup>th</sup> April, 2019 seeking for orders;-
  - a. That the matrimonial home and the household goods therein be granted to the Petitioner unconditionally.
  - b. That the following properties acquired in the names of the Applicant and Respondent be declared matrimonial property.
    - i. Plot number 17 in xxxxx Farm, xxxx
    - ii. Plot Number xxxxx in Kilimambogo
    - iii. Plot numbers 16xx, 16xxx, 16x and 16x and 16xxxxx in Thika.
    - iv. Motor Vehicle registration number KCL xxxx Honda Freed
    - v. Joint ownership shop at Old Nation House
    - vi. Joint account number 0110912102xxxx at Cooperative Bank, Moi Avenue Branch
  - c. That the ownership documents of the properties above be produced before this Honourable Court for assessment and to enable the applicant access and use the properties



- d. That the properties be registered in joint names of the Applicant and Respondent pending the court's assessment on the contribution of each party towards acquiring of the same.
2. The Summons is based on the grounds that the parties have been married since March 18<sup>th</sup> 2017 and that the properties were acquired during the subsistence of the marriage and the parties made different contributions and that the Respondent has been disregarding the Applicant's interest in the properties as such the parties should be awarded their share of the property according to their contribution.
3. The Summons is supported by the affidavit of the Petitioner JWN . She deposed that she has been married to the Respondent since 2017 but the Respondent has since kicked her out of their matrimonial home with no access, the Respondent having changed the locks as such she does not have access to most of her documents. They had acquired most of the matrimonial properties together. She outlined her contribution towards the acquisition of the matrimonial home and properties thereon. She averred that the actions of the Respondent to deny her access to the matrimonial home and properties deprive her of her matrimonial property rights.
4. In his answer to the Petition, the Respondent SMK averred that they were living as husband and wife since 2017 when they got married until 2019 when the Applicant deserted the matrimonial for no apparent reason leaving with some of his belongings. He averred that his attempts to reconcile with the Applicant have been unsuccessful. He denied the claims of cruelty made by the Applicant.
5. The parties were directed to canvass the Originating Summons by way of viva voce evidence.
6. JWN (PW1) testified that together with the Respondent they bought the matrimonial properties jointly being Plot no. 17 xxxxx Farm, Plot xxxxx Kilimambogo, Plots 16xx, 16xxx, 16x and 16xxxxx Thika, motor vehicle KCL xxxx, joint shop and a joint account. Together with the Respondent and during the pendency of the marriage they bought furniture, burner stove, television, washing machine, event equipment, mixers, address systems and gym equipment. She averred that she was employed in China and the Respondent did not have a stable job as such her contribution was higher. She left the home with only her clothes and shoes. She estimated her contribution to be about 70%. She averred that properties are registered in the name of the Respondent by his father while it should be joint as she used to send money to her mother who in turn sent it to the Respondent's father to buy properties on their behalf.
7. HMN (PW2) testified that the Applicant was her daughter. In cross exam she stated that she gave the Respondent's father Kshs. 300,000/= when the Respondent and the Applicant were in China.
8. SMK (DW1) wished to adopt his witness statement as his evidence in chief. He stated that he is aware of the properties bought by the Applicant and himself. He listed Plot 16 xxxx, a computer business along Tom Mboya Street. Plot 16 was registered in the name of Charles Njoroge the Applicant's father. Plot 17 is registered in his name. He was also in possession of Plot xxxxx as well as the motor vehicle. He stated that the Applicant was in possession of Certificate for Plot nos. 16xx, 16xxx, 16x and 16xxxxx.
9. James Kamau Muigai (DW2) testified that he is the Respondent's father and that his younger brother Francis used to go to China to buy phone accessories which he would sell and send money to the Applicant's mother Hannah. He would buy property for the Respondent and the Applicant upon their instruction. He bought Plot no. 16 which was registered in the name of Charles as one could not register two plots under one name.
10. After the close of the case the parties were directed to file and exchange written submissions.



### **Applicant's Submissions**

11. The Applicant submitted that she had stated her exact contribution in her supporting affidavit with regard to the acquisition of the matrimonial properties facts which were not challenged by the Respondent. She did not benefit from the proceeds of the public address sold by the Respondent which was a source of their income and that the Respondent kicked her out of their matrimonial home where she left all the house hold goods as well as the motor vehicle which the Respondent uses for Uber business with the Applicant receiving no proceeds from the same. The court was urged to take the facts as deponed in the affidavit as irrebuttable evidence in the absence of documentary evidence. It was submitted that the Applicant deserved a larger share as the Respondent has been having sole enjoyment of the matrimonial properties since their separation being in the ratio of 70:30 in favour of the Applicant. Reliance was placed in the case of EKTM vs ECC Machakos High Court Matrimonial Cause No. E001 of 2012.

### **Respondent's Submissions**

12. The Respondent submitted that the court should find that Plot 16 registered in the name of Charles the Applicant's father forms part of the matrimonial property as it was acquired by proceeds of money coming from both the Applicant and the Respondent. The Respondent submitted that the matrimonial properties acquired by the Applicant and the Respondent should be shared equally on a 50:50 basis. The Respondent sought for costs as it is the Applicant who deserted the matrimonial home contrary to the claims that she was kicked out by the Respondent.

### **Issues For Determination**

13. Having considered the Petitioner's Originating Summons, the supporting affidavit, the Respondent's answer to the Summons and the respective rival written submissions, the main issues arising for determination are:-
  - i. Whether the extent of each parties contribution in the acquisition of the matrimonial properties.
  - j. Whether Plot 16 xxxx forms part of the matrimonial properties.

### **Analysis And Determination**

14. The parties herein have been married since 18<sup>th</sup> March 2017 and that during the subsistence of their marriage they acquired several properties together. The Applicant listed the properties as being Plot 17, Plot 455, Plot 16xx, 16xxx, 16x and 16xxxxxx, motor vehicle registration number KCL xxxx Honda Freed, a shop and a joint account at Cooperative bank as well as household goods.
15. The Applicant stated that she did not have documents to prove her level of contribution as the Respondent kicked her out from their matrimonial home and she only left with her clothes and shoes leaving behind all the household goods and all her documents.
16. She averred that she used to work in China and could send money to her mother who together with the Respondent's father would buy properties on behalf of the Respondent and herself.
17. She contended that her contribution was higher than that of the Respondent as the Respondent was not financially stable even though she did not have documentary evidence to support her claim.
18. The Respondent reiterated that the properties were bought jointly and as such they should be distributed equally amongst both of them as they were both sending funds to their parents to buy the



properties on their behalf. He sought for Plot 16 to be declared a matrimonial property as it is registered in the name of the Respondent's father who is now deceased but had bought the said property on their behalf.

19. Section 6 of the *Matrimonial Property Act* defines matrimonial property as:
  - (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.
20. In the instant case, the parties seem to be in agreement that the properties herein are matrimonial properties as they were acquired jointly and during the pendency of the marriage.
21. The only property in contention is Plot 16 in xxxxx Farm xxxx which is registered in the names of Charles Wachira Kamau, the Applicant's father but the Respondent contends that the same is matrimonial as it was bought using funds jointly sent by the parties to their parents who bought the plot on their behalf. He averred that most transactions were conducted based on trust as such there is minimal documentation. He contended that the Applicant's father was supposed to transfer the property to them before his demise.
22. Having considered the evidence tendered by both parties this court finds that the property known as Plot 16 in xxxxx Farm xxxx registered in the name of the Charles Wachira Kamau is matrimonial property in the meaning of Section 6 of the *Matrimonial Property Act* as the same was acquired by the Applicant's father on behalf of the Respondent and the Applicant and the same was during the pendency of the marriage between the parties herein.
23. Refer to the case of T.M.V. vs F.M.C (2018) eKLR where Nyakundi J. opined that:-

“...for property to qualify as matrimonial property, it ought to have been acquired during the subsistence of the marriage between the parties unless otherwise agreed between them that such property would not form part of matrimonial property.”
24. In regard to contribution, Section 7 of the *Matrimonial Property Act* is clear in its terms that:

“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.”
25. Contribution towards the acquisition of matrimonial property is defined under Section 2 of the *Matrimonial Property Act*, 2013 in the following terms;-

In this Act, unless the context otherwise requires—

“contribution” means monetary and non-monetary contribution and includes—

  - a) domestic work and management of the matrimonial home;
  - (b) child care;
  - (c) companionship;
  - (d) management of family business or property; and



- (e) farm work.
26. In the case herein, the parties have not attached evidence to prove their level and/or extent of their contribution towards the acquisition of the matrimonial properties. The Applicant claims that she left all her documents at their matrimonial home where she was kicked out by the Respondent.
27. The Applicant alleges that her contribution is higher and that the Respondent has been solely enjoying the vehicle and the household goods as such the court should take that into consideration and distribute the properties at the ratio of 70:30 in her favour.
28. The Respondent contends that the matrimonial properties herein were bought jointly during the subsistence of the marriage as such should be distributed equally on a 50:50 basis. He contended that theirs was a marriage and not a business contract.
29. Distribution of matrimonial properties is based on each parties contribution both monetary and non-monetary.
30. Refer to the case of Federation of Women Lawyers Kenya (FIDA) vs. Attorney General & another (2018) eKLR where the court stated that:-
- “The law recognizes equal worth and equal importance of the parties in marriage. Thus, the beneficial share of each spouse as the law on the division of matrimonial property stands in Kenya ultimately depends on the parties proven respective proportions of financial contribution either direct or indirect towards the acquisition of the property. First, the Act recognizes monetary and non-monetary contribution which is clearly defined. By providing that a party walks out with his or her entitlement based on his or her contribution, the section entrenches the principle of equality in marriage.”
31. The Applicant herein urged the court to distribute the matrimonial properties as pleaded in her supporting affidavit. This is despite there being no evidence to support her claim on contribution. The Respondent urged the court to distribute the properties equally amongst both of them as they were married when they acquired the said properties and that they both contributed jointly towards the acquisition of the said properties.
32. In the circumstances, therefore, and bearing in mind the evidence on record, this court is satisfied that on a balance of probabilities both parties have demonstrated that they both contributed jointly towards the acquisition of the matrimonial properties.
33. This court will also be guided by Article 45(3) of *the Constitution* of Kenya which provides thus:
- “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.”
34. To this end, this court thereby proceeds to distribute the matrimonial properties listed hereunder between the Applicant and the Respondent on a 50:50 basis.
35. As for Plot 16 xxxx the same is subject to Succession proceedings for the late father of the Applicant. Again the interest of both parties be noted to be on a 50:50 basis.

### **Findings And Determination**

36. For the foregoing reasons this court makes the following findings and determinations;



37. This court finds the Application to be partially with merit; This court hereby declares the properties listed hereunder to be matrimonial property;
- i. Plot number 17 in xxxxx Farm, xxxx
  - ii. Plot Number xxxxx in Kilimambogo
  - iii. Plot numbers 16xx, 16xxx, 16x and 16x and 16xxxxx in Thika.
  - iv. Motor Vehicle registration number KCL xxxx Honda Freed
  - v. Shop at Old Nation House
  - vi. Account number 0110912102xxxx at Cooperative Bank, Moi Avenue Branch
38. The extent of each parties contribution in the acquisition of the matrimonial properties is found to be on a 50:50 basis.
39. This court hereby finds Plot 16 xxxxx Farm xxxx to form part of the matrimonial property; the same to be subjected to Succession proceedings in the Estate of the Late father of the Applicant. The interest of both parties be noted therein on a 50;50 basis.
40. Each party to bear their own costs.

Orders Accordingly

**DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 14<sup>TH</sup> DAY OF FEBRUARY, 2025**

**A. MSHILA**

**JUDGE**

In the presence of;

Sanja – Court Assistant

Kyallo – for the Applicant

Kihara – for the Respondent

