



REPUBLIC OF KENYA



LWG v GGW (Civil Case E008 of 2021) [2025] KEHC 3188 (KLR) (21 February 2025) (Judgment)

Neutral citation: [2025] KEHC 3188 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL CASE E008 OF 2021
MA ODERO, J
FEBRUARY 21, 2025**

BETWEEN

LWG PLAINTIFF

AND

GGW DEFENDANT

JUDGMENT

1. The Plaintiff LWG filed in the High Court the Originating Summons dated 3rd August 2021 seeking for orders:-
 1. That a declaration do issue that the properties listed herein constitute matrimonial property and are held by the Respondent in trust for the Applicant namely:-
 - (i) Land Parcel no. Aguthi/Gatitu/2xxx;
 - (ii) Permanent House erected on land parcel no. Aguthi/Gatitu/2xxx;
 - (iii) Motor vehicle registration number KBN 8xxx.
 - (iv) Proceeds from the sale of the non-permanent house built on their ancestral land at Gititu
 - (v) Proceeds from the sale of motor vehicle Registration number KBL 2xxx;
 2. That a declaration do issue that the Applicant is entitled to a 80% share of the suit properties and an order for the settlement of the said share by registration or vesting of the same in favour of the Applicant.
 3. That a specific order do issue that one of the suit properties Land Parcel no. Aguthi/Gatitu/2xxx on which the matrimonial home is situated be registered in the name of the Applicant.



4. That the Respondent be ordered to deliver accounts in respect to proceeds of sale collected from the sale of motor vehicle registration number KBL 2xxx sold during subsistence of marriage in the year 2017 and further pay to the half share of the proceeds therefrom, in default thereof the said share be compensated with part of the Respondent's share of the rest of the suit properties.
 5. That the Respondent be ordered to deliver accounts in respect to proceeds from the sale of their non-permanent house situated at their ancestral home in Gichira sold during subsistence of the marriage around 2009 to the Respondent's brother without the Applicant's knowledge and consent and further pay to the Applicant half share of the proceeds therefrom, in default thereof the said share be compensated with part of the Respondent's share of the rest of the suit properties.
 6. That a specific order do issue for the Respondent to make a reasonable provision of Kenya Shillings Sixty Thousand (Kshs. 60,000/-) monthly for the maintenance of the Applicant herein following the dissolution of their marriage.
 7. That a specific order to issue for the Respondent to compensate the Applicant for the damages caused due his acts of cruelty and adultery which caused the Applicant psychological torture.
 8. That an order do issue declaring that 100% or such other higher proportion of the property afore stated is held by the Respondent in trust for the beneficial interest of the Applicant.
 9. That the Respondent meets the costs of this suit and incidentals thereto.
2. The Summons was premised upon order 37 of the Civil Procedure Rules 2010, Section 7 of the Matrimonial Property Act, and all other enabling provisions of the law and was supported by the Affidavit of even date and the Supplementary Affidavit dated 26th April 2022 both sworn by the Plaintiff.
 3. The Respondent GGW opposed the Summons and filed a Replying Affidavit dated 2nd September 2021 as well as the Further Replying Affidavit dated 14th December 2022.
 4. The Summons was canvassed by way of Vive Voce evidence. The hearing commenced before the High Court at Nyeri on 20th May 2024. Each side called one (1) witness, in support of their case.

Background

5. The Plaintiff and the Respondent were a married couple. They initially got married under Kikuyu customary law in the year 1992 and later solemnized their union through a Civil marriage in the year 2021. Their union was blessed with two (2) sons both of whom are now adults and are self-reliant.
6. The couple later began to experience problems in their marriage and the Plaintiff filed Divorce Cause No. E1 of 2020. Their marriage was then dissolved and a Decree Nisi was issued on 3rd August 2021.
7. The Plaintiff then filed their suit seeking division of matrimonial property. The matter was initially referred to Court Annexed Mediation but no settlement agreement was reached. As such the matter was listed for hearing.

The Evidence

8. The Plaintiff LWG told the court that she is a teacher employed by the Teachers Service Commission (TSC). She confirms that she was once married to the Respondent but that they later divorced.



9. The Plaintiff told the court that during the subsistence of their marriage the couple acquired the following properties:-

“

- “(i) Land Parcel No. Aguthi/Gatitu/2xxx
- (ii) Permanent House erected on Land parcel No. Aguthi/Gatitu/2xxx.
- (iii) Motor Vehicle Registration number KBN 8xxx.
- (iv) A non-permanent house built on the Respondent’s ancestral land.
- (v) Motor Vehicle Registration number KBL 263 P.

10. The Plaintiff avers that in the year 2002. She took out a loan of Kshs. 220,000 from Mwalimu Co-operative Savings and Credit Society Limited which she paid as part of the purchase price for the property known as Aguthi/Gatitu/2xxx, (hereinafter referred to as the ‘Skuta Property’) which property was registered in the joint names of both the Plaintiff and the Respondent.
11. That in the year 2003 the Plaintiff commenced construction of the matrimonial home on the Skuta property. She alleges that she single- handedly put up the matrimonial home without any assistance from the Respondent. As such the Plaintiff prays that the ‘Skuta Property’ be allocated entirely to herself.
12. The Plaintiff also states that in the year 2016, the couple purchased a vehicle Registration KBN 8xxx which vehicle was registered in the name of the Respondent and which vehicle the Respondent has been using to the exclusion of the Plaintiff.
13. That in the year 2011 the couple purchased a motor vehicle Registration No. KBL 2xxx which vehicle was also registered in the name of the Respondent.
14. The plaintiff avers that despite her having contributed towards the purchase of both vehicles, the Respondent later sold the vehicle Registration KBL 2xxx without her knowledge and/or consent despite the same being matrimonial property.
15. The Plaintiff also states that in the year 1997 the couple jointly built a temporary home in the Respondents ancestral home in Gichira-Tetu Sub-County. That the Respondent later sold the house to his brother without the plaintiff’s knowledge and/or consent and refused to share the proceeds of sale with her despite her having contributed towards the construction of that house.
16. The Plaintiff further avers that she has taken several loans, and has invested financially in the matrimonial properties, that she ran the home and catered for bills and basic needs of the family without the assistance of the Respondent. She alleges that the Respondents never contributed towards the education of their last born son, that he subjected her to mental anguish, and failed to maintain her as his spouse. She therefore prays for division of the matrimonial property.
17. The Respondent vehemently opposed the Summons. He confirms that he was once married to the Plaintiff and confirms that they are now divorced.
18. The Respondent confirms that the couple acquired the property known as Aguthi/Gatitu/2xxx during the subsistence of their marriage by pooling their resources. However the Respondent avers that he contributed the larger share towards the purchase price.



19. The Respondent states that he was in charge of the construction of the Matrimonial home and states that the plaintiff made minimal contribution.
20. The Respondent denies that the two vehicles constitute matrimonial property and states he single handedly purchased the vehicle Registration No. KBN 8xxx. He states that he built the temporary house on his ancestral land in the year 1995 and 1996. That during this period the plaintiff had been interdicted and was not receiving any salary, thus she was not in a position to make any financial contribution, towards the construction of the temporary house.
21. The Respondent states that he has supported his family to the best of his ability and that even after the couple divorced he has continued to provide support. That the suit has merely been filed by the plaintiff in an attempt to impoverish him. He prays that the ‘Skuta Property’ be divided equally between them and urges the court to dismiss the plaintiffs suit.
22. At the close of the oral evidence the parties were invited to file written submissions. The Plaintiff filed the written submissions dated 9th September 2024, whilst the Respondent relied upon his written submissions dated 31st October 2024.

Analysis And Determination

23. I have carefully considered the Summons before this Court, the reply filed thereto, the evidence on record as well as the written submissions filed by both parties. The issues which arise for determination are:-
 - (i) Which properties constitute matrimonial property.
 - (ii) How should the matrimonial property be divided.

i. Matrimonial Property

24. It is common ground that the Plaintiff and the Respondent were once married to each other. That they bore two sons together both of whom are now adults. It is not in dispute that the couple are now divorced as evidenced by the Decree Nisi issued on 3rd August 2021 (see Annexure LWG ‘2’ to the Originating Summons). Therefore the plaintiff and the Respondent were in a marital union from 1991 to August 2021 – a period of about twenty (20) years.
25. Section 6(1) of the Matrimonial Properties Act 2013 defines ‘matrimonial property’ as follows:-

“6(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.
 - c. Any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.”
26. Regarding the property known as Aguthi/Gatitu/2340 (‘the Skuta property’) the evidence is that the same was purchased in the year 2002. The Sale Agreement dated 18th November, 2002 (Annexure LWG 5 (b) to the Originating Summons) indicates that the Skuta Property was purchased from one Christina Kinyua. The purchasers are named as GGW and Lucy Wanjiku Nyawira i.e the plaintiff and the Respondent.



27. The Title Document for the Skuta Property (Annexure LWG 6(b)) shows that the property is registered in the joint names of George Gitonga Waruru and Lucy Wanjiku Nyawira. Therefore it is quite clear that the property was jointly owned by the plaintiff and the Respondent.
28. Both the Plaintiff and the Respondent confirm that this was the matrimonial home where the couple lived together as man and wife and where they raised their children. Therefore in terms of Section 6(1) (a) of the [Matrimonial Property Act](#) I find that this Skuta Property was matrimonial property.
29. Regarding the two motor vehicles Registration KBN 8xxx and KBL 2xxx, these were acquired in the year 2016 and 2011 respectively. Once again both vehicles were acquired during the subsistence of the marriage and both were registered in the name of the Respondent.
30. Section 14 of the [Matrimonial Property Act](#) sets out two rebuttable presumptions in regard to property acquired during marriage as follows:-

- “ 14. Where matrimonial property is acquired during the 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 a rebuttable presumption that their beneficial interests in the matrimonial property are equal.”

31. It is trite law that he who alleges must prove. The [Evidence Act](#) places the burden of proof of any fact on the person who wishes to rely on the same section 107 of the [Evidence Act](#) Cap 80, Law of Kenya provides as follows:

“Burden of Proof

1. Whoever desires any court to give judgment as to any legal or liability dependent on the existence of facts which he asserts must prove that those facts exist.
2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

32. In the case of Njoroge Vs Ngari [1985] KLR 480 the court stated that where a property is held in the name of one spouse, even if that property is registered in the name of one person but the other spouse made contributions towards its acquisition, then each spouse has a proprietary interest in said property. The Court in that case held thus -

“Where a property is registered in the name of one spouse only the other spouse is required to prove contribution towards the acquisition of said property in order to establish beneficial interest thereto.”

By this holding, the court gave effect to section 14 of the [Matrimonial Property Act](#).

33. In the case of PWK -vs- JKG [2015] eKLR the court stated as follows:-

“where the disputed property is not so registered in the joint names of the spouses but is registered in the name of one spouse the beneficial share of each spouse would ultimately depend on their proven respective properties of financial contribution either direct or indirect towards the acquisition of the property. However, in cases where each spouse has



made a substantial but unascertainable contribution, it may be equitable to apply the maxim Equality is equity while heeding the caution of Lord Pearson in *Gissing vs Gissing* [1070] 2ALL ER 780 Page 788” [own emphasis]

34. Similarly ALM -VS- JNN 920220 eKLR the court held that:

“Further Section 14(a) of the Act provides that where matrimonial property is acquired during the marriage in the name of the one spouse, there shall be a rebuttable presumption that the property is held in trust for the other spouse. In the instant case, the suit properties being matrimonial property as it was acquired during the subsistence of the marriage and being registered in the name of the defendant it can only be said that the said was held in trust for the Applicant.”

35. Finally in the celebrated case of Peter Mburu Echaria Vs Priscilla Njeri Echaria [2007] eKLR it was held thus:-

“It is clear from those cases that when dealing with disputes between husband and wife over property the court applies the general principles of law applicable in property disputes in all courts between all parties irrespective of the fact that they are married. Those principles as Lord Diplock said in *Petti* are those of English law of trusts. The House of Lords specifically decided so in *Gissing vs. Gissing*. According to the English law of trusts it is only through the wife’s financial contribution, direct or indirect towards the acquisition of the property registered in the name of her husband that entitles her to a beneficial interest in the property.” [own emphasis]

36. It manifest that Section 14 of the *Matrimonial Property Act* creates a trust in favour of a spouse with respect to the properties acquired during the subsistence of the marriage in the name of one spouse only. It is not disputed that the vehicle Registration KBN 8xxx though registered in the sole name of the Respondent was acquired during the period when the couple were in a marital union. The said vehicle therefore constitutes matrimonial property.

37. Regarding the other vehicle Registration No. KBL 2630, the same was sold and is now registered to a third party. A copy of the log book (Annexure ‘LWG 9(a)’) indicates that said vehicle is now registered to Eco Bank Ltd and one Paul Mwangi Thiong’o. The plaintiff ought to have complained about the sale/transfer of this vehicle much sooner. As such said vehicle no longer exists as an asset belonging to either party. The current owner of said vehicle is not a party to this matrimonial cause. As such I find that the vehicle KBL 2630 does not constitute matrimonial property.

38. Regarding the non-permanent house constructed on the Respondent ancestral land in Gichira the plaintiff has conceded that the land, in question does not belong to either herself or the Respondent. That the said land is the Respondents family (ancestral) land and the same is registered in the name of the Respondents Grand-mother.

39. The Plaintiff however alleges that in the year 1997, she and the Respondent jointly put up a temporary house on the said land. That the Respondent later sold this temporary structure to his brother and did not share the proceeds of sale with the plaintiff.

40. This house is not registered in the name of either the plaintiff nor the Respondent. The same now belongs to the Respondents brother who is not a party to this suit. The court will not make any orders regarding property belonging to a third party. I find and hold that this temporary house does not constitute matrimonial property.



(ii) Division Of Matrimonial Property

41. The plaintiff claims a share in all the above properties which the court has identified as matrimonial property. In order for the plaintiff to merit a share in the abovementioned properties she is under an obligation to prove her contribution towards the acquisition and/or development of the said property.
42. Contribution by a spouse for purposes of sharing matrimonial property may be monetary or non-monetary or both. According to section 2 of the *Matrimonial Property Act*;
- “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; [own emphasis]
43. Non-monetary contribution is defined in the Act to include Domestic work, management of the matrimonial home, child care, management of family business farm work and companionship.
44. Section 7 of the Act provides that:-
- “Subject to section 6(3), ownership of matrimonial property vests in the spouse 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.”
45. In *Federation of Women Lawyers Kenya (FIDA) -vs- Attorney General & another* [2018] eKLR 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 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.” [Own emphasis]
46. In *UMM -vs- IMM* [2014] eKLR the court was of the view that:
- “As far as I can see it is the provisions of Sections 2, 6 and 7 of the *Matrimonial property Act*, 2013 fleshes out the right provided by Article 45(3). By recognizing that both monetary and non-monetary contribution must be taken into account, it is congruent with the Constitutional provisions of Article 45 (3) of *the Constitution* 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. I take the view that at the dissolution of the marriage each partner should walk away with what he/she deserves. What one deserves must be arrived at by considering her/his respective contribution whether it be monetary or non-monetary. The bigger the contribution the bigger the entitlement. Where there is evidence that a non-



monetary contribution entitles a spouse to half of the marital property then the Courts should give it effect. But to hold that Article 45(3) decrees an automatic 50:50 sharing could imperil the marriage institution. It would give opportunity to a fortune seeker to contract a marriage, sit back without making any monetary or non-monetary contribution, distress the union and wait to reap half the marital property. That surely is oppressive to the spouse who makes the bigger contribution. That cannot be the sense of equality contemplated by Article 45(3).” [own emphasis]

47. This issue of how matrimonial properties should be divided was conclusively settled by the Supreme Court of Kenya in the case of Joseph Ombogi Ongentoto -vs- Martha Bosibori Ogentoto Petition No. 11 of 2020 where it was held as follows:

“.....we also find that Article 45(3) acts as a means of providing for equality as at the time of dissolution of marriage but such equality can only mean that each party is entitled to their fair share of matrimonial property and no more. Nowhere in *the constitution* do we find any suggestion that a marriage between parties automatically results in common ownership or co-ownership of property (hence vesting of property rights) and Article 45(3) was not designed of the purpose of enabling this court to pass property rights from one spouse to another by fact of marriage only....

.....our view is that, while Article 45(3) deals with equality of the fundamental rights of spouses during and after dissolution of marriage, we must reiterate that equality does not mean the re-distribution of proprietary rights at the dissolution of a marriage. Neither does our reading of this provision lead to the assumption that spouses are automatically entitled to a 50% share by fact of being married...

.....it is our finding that the stated quality under Article 45(3) means that the courts are to ensure that at the dissolution of a marriage, each party to a marriage gets a fair share of the matrimonial property based on their contribution. This is best done by considering the respective contribution of each party to ensure no party is unfairly denied what they deserve as well as ensuring that no party is unfairly given more than what he or she contributed...

....Therefore, in the event that a marriage breaks down, the function of any court is to make a fair and equitable division of the acquired matrimonial property guided by the provisions of Article 45(3) of *the Constitution*. To hold that Article 45(3) has the meaning of declaring that property should be automatically shared at the ratio of 50:50 would bring huge difficulties within marriages and Tuiyot, J (as he then was) has explained why above. Noting the changing times and the norms in our society now, such a finding would encourage some parties to only enter into marriages, comfortably subsist in the marriage without making any monetary or non-monetary contribution, proceed to have the marriage dissolved then wait to be automatically given 50% of the marital property. That could not have been the intention of our law on the subject.” [own emphasis]

48. Based on the above legal provisions and a plethora of other decided cases it is clear that despite the constitutional requirement that parties to a marital union shall have equal rights, each party must be able to prove either monetary or non-monetary contribution in order to merit entitlement to a share of the matrimonial property.



(a) Matrimonial Home

49. It is conceded by both parties that they purchased the land known as LR No Aguthi/Gatitu/2xxx in the year 2002 during the subsistence of the marriage. The couple thereafter constructed a home on said property which became the matrimonial home where both lived and raised their children. The Plaintiff told the Court that their eldest son has also constructed a house on the said property.
50. The plaintiff asks that she be allocated the entire 'Skuta' property which she alleges she took out a loan to purchase. The plaintiff also claims that she single handedly financed the construction of the matrimonial home on that land without any assistance from the Respondent.
51. The Title Document for this Skuta Property indicates that the same is registered in the joint names of the plaintiff and the Respondent (Annexure "WG 6(b)" to the Originating Summons.)
52. An agreement for sale dated 18th November, 2002 names both the Plaintiff and the Respondent as the Purchasers of the said property (Annexure 'LWG 5(b)'). A certificate of official search dated 6th January 2020 confirms that the Skuta Property is registered in the joint names of the plaintiff and the Respondent.
53. The Plaintiff claims that it was she who paid the purchase price. If the plaintiff purchased this property singlehandedly then why was the Respondent named as a joint purchaser and why was he registered as a joint owner of the property?
54. The argument may be made that being in a lawful marital union with the Respondent which marriage the couple undoubtedly hoped would endure forever, the Plaintiff purchased the 'skuta property' and then decided to have the same registered in the name of both herself and her husband. The court must then determine whether the plaintiffs claim that she single handedly purchased this property has been proved.
55. The plaintiff states that in the year 2002 she took a loan of Kshs. 213,000 from Mwalimu SACCO. She availed a copy of the loan application form dated (Annexure 'LWG 4(c)'). The loan was duly disbursed (Annexure 'LWG 4 'b') and on 18th November 2002, the Plaintiff withdrew a sum of Kshs. 213,000 from her KCB Account (See Annexure LWG 5(a)')
56. The purchase price for the skuta property was Kshs. 370,000. The terms of payment were a deposit of Kshs. 230,000 to be paid on execution of the Agreement and the balance of Kshs. 145,000 to be paid at the time of transfer. Since the property was eventually transferred to the purchasers it is quite safe to assume that the purchase price was paid in full.
57. The Plaintiffs bank statement indicates that on 18th November 2002 she withdrew an amount of Kshs. 213,000/= (see Annexure 'LWG 5(a)') and on the same date the deposit of Kshs. 230,000 was paid for the purchase of the 'Skuta Property' Therefore one can take it that the loan secured was utilized to pay the deposit for the purchase of said property.
58. Annexure 'LWG 6(a)' is an acknowledgement by the Seller that the balance of Kshs. 145,000 was paid pursuant to the sale Agreement.

This acknowledgement is not dated. The purchaser Chistina Wakiuru Kinyua confirms having received from both the plaintiff and the Respondent the sum of Kshs. 145,000 as full and final payment for the suit land.
59. There is no evidence to show the source of this amount of Kshs. 145,000. More pertinently there is no evidence adduced by the plaintiff to show that the said funds originated from herself. The seller



acknowledges receipt of the final payment from both purchasers. The seller was not called as a witness to confirm who out of the two paid this amount of Kshs. 145,000 to her.

60. The court has no reason to dismiss the Respondents contention that he paid part of the purchase price. The Respondent was at the material time a teacher employed by the Teachers Service Commission. He was earning a salary as evidenced by the pay slips he has annexed.

Annexure ‘GWW2’ to the Replying Affidavit dated 21st September 2021. Equally just like the plaintiff the Respondent undoubtedly had access to various loan and credit facilities. As such the Respondent had the financial capacity to pay pay/contribute towards the purchase price for this property.

61. Indeed under cross-examination the plaintiff says

“I spent more on the purchase of the land. This is not reflected in the Agreement I paid a bigger portion of the purchase price.....”

62. This statement amounts to a tacit admission that contrary to what the plaintiff wants the court to believe the Respondent did make some financial contribution towards the purchase of the land in question.

Certainly the evidence does not show that the plaintiff single handly paid the entire purchase price as she has alleged.

63. In the year 2003 the parties commenced construction of their matrimonial home on the skuta property. The plaintiff claims that she single handedly financed the construction of the matrimonial home by utilizing various loan facilities and through her savings. That she withdrew funds from her bank account which funds she gave to the Respondent to purchase materials and pay labour for the construction.

The plaintiff relies on a handwritten note book as well as copies of her bank statements as proof of the above Annexures ‘LW 67(a) (b) and (c).

64. The hand written notes ‘LWG 7(b)’ are merely a list of the various payments made in respect of the construction. There is no indication of who or from where those funds came from. There is no clear notation that these funds were given by the plaintiff to the Respondent.

The notes are merely on record of funds utilized in construction which I believe the couple made in order to track their expenses.

65. The Plaintiff claims that the Respondent did not make any non-monetary contribution towards the matrimonial home. She claims that she single handedly paid fees for their children purchased food and basically ran the home. I find this claim hard to believe.

66. According to the Respondent the couple pooled their resources to buy and develop the skuta property. The Respondent told the court that he supervised the construction of the said property – such supervision amounts to non-monetary contribution towards the construction of the matrimonial home.

67. The Plaintiff claimed that she single handedly paid school fees for the couple’s youngest son. However she did not indicate who paid fees for the elder son – she did not state that she single handedly paid fees for both sons. Indeed under cross-examination the plaintiff concedes that

“The Respondent was partly educating the children.....”



68. The Respondent has annexed to his Replying Affidavit (Pages 187 to 195] proof of payment he made to JKUAT as fees for one of their sons.

The plaintiff goes on to admit that the Respondent participated in assisting financially to resolve an issue faced by their elder son at his work place.

69. These are not the actions of a ‘dead-beat dad’. It is quite evident that the Respondent participated in educating and raising the children.

The Respondent stated that for a period of time, the plaintiff had been interdicted and was not earning any salary. The plaintiff admitted that she had for a period been suspended from work by the TSC. The Respondent has annexed at page 26 to his Replying Affidavit at the plaintiffs letter of interdiction which is dated 13th March 1995.

70. Indeed the Plaintiff under cross-examination admits that initially the couple lived in harmony with no major problems – much like any other married couple. They shared duties and both contributed towards the maintenance of the home and the upkeep of their children.

71. Obviously during the period the plaintiff was on suspension the Respondent had to have been providing for all the needs of the family.

Therefore the plaintiffs claim that she single handedly maintained and provided for the upkeep of the entire family throughout their marriage cannot be believed.

72. Finally with regard to this Skuta Property I find that the parties jointly purchased the property and jointly constructed the matrimonial home.

The plaintiff has adduced evidence to show that he paid Kshs. 500,000 towards the construction of a house for the couple’s son on this same property.

73. The plaintiff has not satisfied this Court that she is entitled to the entire property nor that she is entitled to a larger share in this Skuta Property than the Respondent. The property was for several years from 2003 to 2018 the matrimonial home. I find that each is entitled to a 50% (fifty percent) share of the property known as Aguthi/Gatitu/2xxx as well as all developments thereon.

(b) Motor Vehicles

74. The plaintiff claims a share of the motor vehicles Registration KBN 8xxx which was acquired during the subsistence of the marriage. The plaintiff claims that she made direct financial contribution towards the purchase of the said motor vehicle.

75. The said motor vehicle Registration KBN 8xxx was purchased in the year 2016. A copy of the logbook and search (Annexure ‘LWG 8(a)’) indicate that said vehicle is registered to Platinum Credit Limited and GGW (the Respondent).

76. In his defence the Respondent stated that purchased this vehicle using a loan from Platinum Credit Society. The Respondent has annexed statements from Platinum Credit (Annexure ‘GGW3’ to the Replying Affidavit dated 21st September 2021). The fact that the vehicle is registered in the joint names of both the Respondent and Platinum Credit proves that indeed the purchase of the vehicle was financed by Platinum Credit.

77. On the other hand the plaintiff has not adduced any evidence to show that she made any contribution towards the purchase of said vehicle.

Accordingly I find that the plaintiff has not proved her claim to a share of this motor vehicle.



78. The Plaintiff also prayed that the Respondent be ordered by court to pay her a monthly maintenance of Kshs. 60,000 (sixty thousand only). In effect the plaintiff is praying that the court make an award of 'alimony' in her favour.

79. The plaintiff also prayed to be awarded compensation for the Respondents alleged acts of cruelty against her. These prayers cannot be canvassed in this suit which is a suit for division of matrimonial property. These are prayers which the plaintiff ought to have included in her Petition for Divorce which was already been heard and concluded.

I therefore dismiss prayers 6, 7 and 8 of this summons.

80. Finally based on the foregoing this court makes the following orders.

- (1) _That the following properties are declared by this court to constitute matrimonial properties
 - (i) Land Parcel No. Aguthi/Gatitu/2xxx .
 - (ii) Permanent House erected on Land Parcel Number Aguthi/Gatitu/2xxx.
 - (iii) Motor Vehicle Registration No. KBN 8xxx
- (2) That a declaration is hereby issued that the plaintiff is entitled to a 50% (fifty percent) share of the value of land Parcel No. Aguthi/Gatitu/2xxx together with all building and developments thereon.
- (3) That the property known as Aguthi/Gatitu/2xxx together with all buildings and developments thereon be valued and sold. The proceeds of sale to be distributed between the plaintiff and the Respondent at a ratio of 50:50.
- (4) In the Alternative Either party is at liberty and has the option to buy out the others interest in the above property.
- (5) That prayers (4), (5), (6), (7) and (8) of the Originating Summons dated 3rd August 2021 are hereby dismissed entirely.
- (6) This being a family matter each party to meet their own costs.

DATED IN NYERI THIS 21ST DAY OF FEBRUARY, 2025

.....

MAUREEN A. ODERO

JUDGE

