



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Ngaruiya v Ng'ang'a (Civil Suit 10 of 2020)**  
**[2025] KEHC 2507 (KLR) (14 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2507 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT KIAMBU**  
**CIVIL SUIT 10 OF 2020**  
**A MSHILA, J**  
**FEBRUARY 14, 2025**

**BETWEEN**

**ROSE WAIRIMU NGARUIYA ..... APPLICANT**

**AND**

**JAMES NGARUIYA NG'ANG'A ..... RESPONDENT**

**JUDGMENT**

1. Rose Wairimu Ngaruiya filed her Originating Summons dated 10<sup>th</sup> September, 2020 seeking for orders;-
  - a. That a declaration do issue that all the under listed matrimonial home and properties which are registered in the name of the Respondent and/or on his behalf are owned jointly by the Applicant and the Respondent and/or are held beneficially and in trust for the Applicant.
    - i. LR NO. 225/Residential Plot-Olooloitikoshi Trading Centre-Kajiado County
    - ii. LR. NO. Kiambaa/Thimbigua/5746.
  - i. That an Order do issue declaring that 50% of the value held by the Respondent in the Motor Vehicle are held by the Respondent in trust and for the beneficial interest of the Applicant and further that the Applicant is entitled to a share in Toyota Prado KCG 533B
  - b. That an Order do issue declaring the Respondent to reimburse Kshs. 1.5 Million, being proceeds of loans taken on his behalf with the penalty interest rates of 1.5% per month till payment in full; or in default, the same be provided for as deemed fit by court.
  - c. That a permanent injunction do issue restraining the Respondent from evicting the Applicant out of their matrimonial home namely LR NO. Kiambaa/Thimbigua/5746.



- d. That this Honourable Court be pleased to order that the properties namely;
- i. LR NO. 225/Residential Plot-Oloolotikoshi Trading Centre –Kajiado County
  - ii. LR NO. Kiambaa/Thimbigua/5746

And the income aforesaid (if any) be settled in proportions aforesaid or as the court may order.

2. The application is based on the grounds that the parties were husband and wife and that the properties set out herein were acquired by the joint efforts of the parties during the course of their marriage. The Respondent was said to have assaulted the Applicant while threatening to evict her from the matrimonial home as such an injunction should be issued as the Applicant will suffer irreparable harm in regard to her interest on the matrimonial properties if the orders sought are not granted.
3. The application is supported by the affidavit of Rose Wairimu Ngaruiya. She deposed that she solemnized her marriage with the Respondent on 29/5/2014 and had no issues therein. They bought and agreed to develop property LR. NO. Kiambaa/Thimbigua/5746 in December 2015. She took a mortgage facility worth Kshs. 6 Million from her employer for the development of the plot and to complete the construction. She later took another loan of Kshs. 300,000/= for beautification of the matrimonial home. The property was said to be worth over Kshs. 20 Million. Due to her inability to bear a child, the marriage became strained and around July 2020, the Respondent assaulted and threatened to eject her from the matrimonial home. She reported the incident to Karuri Police Station vide OB NO. 26/26/7/2020 and had previously reported another assault incident vide OB NO. 17/17/3/2017. Due to the emotional, psychological and physical trauma, the marriage became irretrievably broken down and could not be salvaged. She took a further loan of Kshs. 1.5 Million to boost the Respondent who was to service the loan facility but never did. She averred that she is apprehensive that the Respondent wants to kick her out of the matrimonial home which she contributed towards its acquisition as such the Respondent ought to be restrained as she stands to suffer irreparable loss.
4. James Ngaruiya Ng'ang'a filed his replying affidavit sworn on 19<sup>th</sup> October, 2020 where he deposed that it is untrue that parcel land Kiambaa/Thimbigua/5746 was acquired by the Applicant and himself jointly. He purchased the property from a company known as House of Muhinga for a sum of Kshs. 2,600,000/= in December 2014. His desire was the property to be their matrimonial home as such he registered it in their joint names. He constructed their house without any contribution from the Applicant and only stopped the construction in September 2015 when the Applicant left only to return one year later. He contended that all this was done while the Applicant was unemployed as such had not made any contribution towards the acquisition or development of the property and that the Applicant only secured her job with KUSCCO in December 2016. The Applicant was said to have left the home again in March 2017 only to return in 2018 and that is when they charged the property so as to take a mortgage facility of Kshs. 6 Million offered by the Applicant's employer to complete the interior of the home. He contended that at that time the property was valued at Kshs. 5,500,000/= which was his entire contribution. He contended that they agreed that he would be giving Kshs. 26,000/= to the Applicant since the monthly loan repayment was being deducted in advance from her salary. He stated that he made the payments until July 2020 when the Applicant became hostile and abusive. The Kshs. 300,000/= loan taken by the Applicant was for her personal use as they had not agreed on the same. Further, that Kshs. 100,000/= was required for installation of cabro paving to the estate and that he contributed Kshs. 50,000/=. He agreed to the Applicant having 50% share of the home even though his contribution exceeded that of the Applicant. Due to their inability to have children the Applicant became verbally and emotionally abusive. He averred that contrary to the claims by the Applicant, he always met his financial obligations and denied that the Applicant had



been the sole bread winner. He denied having received any money to boost his endeavours as alleged by the Applicant. He also denied having assaulted the Applicant or threatening to eject her from the matrimonial home. He urged the court to consider his rights of ownership and acquisition. Lastly, he contended that he solely acquired LR. NO. 225 Olooloitikoshi Trading Center and Toyota Prado KCG 533 as well as KCE 299A which he acquired for Kshs. 985,000/= and the Applicant was using it with the agreement that she would refund the money which she did not but went ahead and transferred the vehicle to her name as such he sought for a refund. He also sought for a refund as he contributed towards the acquisition of Toyota Harrier Registration KCP 487C.

5. Rose Wairimu Ngaruiya filed a supplementary affidavit dated 20<sup>th</sup> November, 2020. She deposed that notwithstanding joint registration of the property contribution as to acquisition and development must be proven. She denied that she was ever unemployed as alleged by the Respondent. She denied that the Respondent ever contributed Kshs. 26,000/= towards the mortgage repayment as alleged. She averred that her contribution had pushed the property value from Kshs. 5,500,000/= to Kshs. 20 Million as such her estimated contribution was at 85%. Lastly, she stated that KCP 487C was acquired fully through a staff loan deductible from her salary.
6. The parties were directed to canvass the Originating Summons by way of viva voce evidence.
7. Rosemary Wairimu (PW1) testified that the decree absolute was annexed to the supplementary List of Documents. She averred that they purchased the land together and that the agreement has both their names. They paid Kshs. 260,000/= and the balance was to be paid in 90 days. She took a mortgage of 5.5 Million for construction, 1.5 million to complete the construction and a further Kshs. 300,000/= for finishings and for landscaping. She took a Kshs. 1.5 million loan for the Respondent's business which loan she is still repaying. She bought the Toyota Harrier KCP 487C from a car loan which she is still paying to date which the Respondent never contributed to as alleged. She testified that she paid for electricity, water, garbage and security. Her contribution was said to be at 75% and that she is still servicing the mortgage.
8. James Ngaruiya Ng'ang'a (DW1) wished to admit his witness statement and his replying affidavit as his evidence in chief. He stated that he had agreed to pay Kshs. 26,000/= towards the mortgage but was unable to pay because of the hostile environment.
9. After the hearing the parties were directed to file and exchange written submissions; hereunder is a summary of the parties respective submissions;

### **Applicant's Submissions**

10. The Applicant submits that with regard to the matrimonial home being Kiambaa/Thimbigua/5746 what is in contention is the level of contribution. That the Applicant is entitled to a share of LR NO. 225/Residential Plot-Olooloitikoshi Trading Centre-Kajiado County by virtue of her contribution both monetary and non-monetary during the pendency of the marriage. The Applicant further submitted that as much as the Respondent alleged that he solely acquired Toyota Prado KCG 533B as well as KCE 299A Toyota NZE there is no evidence to prove that there was an agreement excluding the said vehicles from being a part of the matrimonial properties. Reliance was placed in the case of T.M.V. vs F. M. C. (2018) eKLR. With regard to Toyota Harrier KCP 487C the same was financed through a staff loan facility of Kshs. 2,200,000/= from the Applicant's employer as such the Respondent has no claim on the same.
11. The matrimonial home was said to be jointly registered as such the beneficial interest in the matrimonial property is equal. Reliance was placed in the case of Yogendra Purshottam Patel vs Pascale Mireille Baksh ( Nee Patel) & 2 others (2006) eKLR. The court was urged to determine whether it



would be just and equitable to apportion the matrimonial home in equal shares considering that the Applicant continues to service the mortgage and a further loan of Kshs. 1.5 Million which she acquired to fund the Respondent's business ventures.

### **Respondent's Submissions**

12. The Respondent submitted that the loan application produced indicated that the purpose of the loan was for development and that no evidence was produced to show that the loan was taken on behalf of the Respondent. Samuel who allegedly received Kshs. 600,000/= is not a party to these proceedings and the interest rate of 1.5% per month being sort was never agreed upon. Reliance was placed on the case of National Bank of Kenya vs Pipelastik Samkolit (K) Ltd & another (2001) eKLR. It was submitted that the Applicant failed to make a case as to how she is entitled to a share of the Prado and the Kajiado plot even though her advocate attempted to submit on the same. Submissions were said not to be evidence. Reliance was placed in the case of Kenya Commercial Bank Limited vs Sheikh Osman Mohammed (2013) eKLR.
13. Subsequently in regard to LR. NO. Kiambaa/Thimbigua/5746 the Respondent submitted that he paid Kshs. 2,600,000/= being the purchase price and that the Applicant has not presented any evidence to confirm that she contributed towards its acquisition and only took out a mortgage in 2019 while the property was purchased in 2014. He averred that the mortgage was an addition to an already existing building and that he used to send Kshs. 26,000/= monthly towards the mortgage and also contributed a further Kshs. 50,000/= for cabro paving. He submitted that bearing the above, the court should find his contribution as being higher unless the court will be persuaded to divide the property equally.

### **Issues For Determination**

14. Having considered the Applicant's Originating Summons, the supporting affidavit, the Respondent's replying affidavit and the written submissions, the main issues arising for determination are:-
  - i. Whether LR. NO. Kiambaa/Thimbigua/5746 forms part of matrimonial properties in this cause
  - ii. To what extent are the parties entitled to LR. NO. Kiambaa/Thimbigua/5746
  - iii. Whether the Applicant is entitled to LR NO. 225/Residential Plot-Ololoitikoshi Trading Centre-Kajiado County and motor vehicle registration number Toyota Prado KCG 533B
  - iv. Whether the Respondent should refund Kshs. 1.5 Million to the Applicant

### **Analysis**

#### **Whether LR. NO. Kiambaa/Thimbigua/5746 forms part of matrimonial properties in this cause**

15. The parties herein solemnized their marriage on 29<sup>th</sup> May, 2014 and that during the subsistence of their marriage they acquired several properties which the Applicant sought the court to declare as being matrimonial properties.
16. 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.



17. Reference is made 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.”

18. With regard to LR. NO. Kiambaa/Thimbigua/5746 it is not in dispute that the same was acquired during the subsistence of the marriage between the parties herein and there being evidence of the same this court is satisfied that LR. NO. Kiambaa/Thimbigua/5746 is part of the matrimonial properties in this cause.

**To what extent are the parties entitled to LR. NO Kiambaa/Thimbigua/5746**

19. What is in dispute with regard to the said property is the level and/or the extent of contribution towards its acquisition and development by each party.

20. The Applicant stated that she took out a mortgage of Kshs. 6 Million for development of their matrimonial home on LR. NO. Kiambaa/Thimbigua/5746 and a further Kshs. 300,000/= for beautification of the matrimonial home causing the value of the property to rise to Kshs.20 Million up from Kshs. 5.5 million which was the value at the time of taking the mortgage.

21. The Respondent averred that he solely purchased LR. NO. Kiambaa/Thimbigua/5746 in 2014 at a cost of Kshs.2,600,000/= as the Applicant was unemployed and proceeded to develop the same and the Applicant only came in 2019 when she took out the mortgage to assist with the completion of the construction as such his contribution was higher.

22. 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.”

23. 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.

24. The parties herein have gone to great lengths to prove their contribution towards the acquisition and the development of the matrimonial home on LR. NO. Kiambaa/Thimbigua/5746.

25. There is ample evidence that both parties contributed in monetary terms towards the acquisition and development of the matrimonial home. Be that as it may, each party alleges to have a bigger share in terms of the monetary contribution. The Applicant claims that she is still servicing the mortgage as



- such is entitled to a bigger share of the matrimonial property with the Respondent claiming that he solely purchased that land and started construction with the Applicant joining in later on.
26. Indeed, distribution of matrimonial properties is based on each party's contribution both monetary and non-monetary. Nevertheless, proof of contribution is not necessarily accurate submission of statistical analysis of money spent with mathematical precision in acquiring or developing property. This was stated in Onyiego J. in the case of H N v J N M ([2019] eKLR.
27. Refer to the case of Francis Njoroge vs Virginia Wanjiku Njoroge Nairobi civil Appeal no 179 of 2009 where the court stated that;-
- “...a division of the property must be decided after weighing the peculiar circumstances of each case. As was stated by the court of Singapore in Lock Yeng Fun Vs 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”.
28. In the circumstances and bearing in mind the evidence on record this court is satisfied that both the Applicant and the Respondent contributed towards the acquisition and development of the matrimonial property aforesaid albeit not in equal proportion but for the interest of justice and fairness this court proceeds to distribute the property equally among both of them on a 50:50 basis.
29. Reference is made 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.”
30. 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.”
- Whether the Applicant is entitled to LR NO. 225/Residential Plot-olooloitikoshi Trading Centre-Kajiado County and motor vehicle registration number Toyota Prado KCG 533B
31. As for LR. NO. 225/Residential Plot-olooloitikoshi Trading Centre-Kajiado County the Applicant claims a share as she alleges she contributed towards its acquisition both monetary and non-monetary. The Respondent avers that the Applicant failed to demonstrate how she is entitled to a share of the same.
32. Section 14 of the *Matrimonial Property Act* provides that:
- “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.”

33. This Court finds that the property having been acquired by the Respondent and during the pendency of the marriage, the same forms part of the matrimonial properties as there was no agreement that the same should NOT form part of the matrimonial properties.

34. Refer to the case of MNH v FHM [(2018) eKLR where it was observed at pg.5 thus:-

“...that in determining the distribution of matrimonial property at the dissolution of a marriage, the Trial Court ought to dispassionately scrutinize the direct and indirect contribution of each party to the marriage in acquisition and/or development of the suit properties. Furthermore, where property is registered in singularly in the name of one spouse, there shall be a rebuttable presumption that such property is held in trust for the other spouse.”

35. The Applicant further puts claim on motor vehicle registration number KCG 533B Toyota Prado which is registered in the name of the Respondent. There is evidence in this court that the Applicant acquired motor vehicle registration number KCP 487C Toyota Harrier as well through a staff loan and which motor vehicle the Respondent is not laying a claim to. In the interest of justice this court finds that each party be entitled to their own motor vehicle.

36. However, the ownership of motor vehicle registration number KCE 299A is in contention. The Respondent is said to have acquired the vehicle for Kshs. 985,000/= but the Applicant was said to be using it with the agreement that she would refund the purchase money. It is alleged that the Applicant failed to refund the money but instead went ahead and transferred the vehicle to her name. The Respondent seeks for a refund of the money.

37. In this regard, this Court is satisfied that based on the agreement that this vehicle is not matrimonial property and the Applicant refund the sum claimed; In default the vehicle, be valued and sold and the proceeds be paid to the Respondent;

#### **Whether the Respondent should refund Kshs. 1.5 Million to the Applicant**

38. Lastly the Applicant sought for a refund of the Kshs.1.5 million loan she alleged to have obtained to support the Respondent’s business venture. The same is denied by the Respondent as he alleges that the Applicant did not produce any evidence to show that she took out the loan on behalf of the Respondent. In any event, the Respondent contended that the money was received by a person named Samuel who is not a party to these proceedings.

39. In the circumstances, this court finds that in the absence of tangible evidence that the said Kshs.1.5 million was received by the Respondent the Applicant’s claim must fail or the same can be directed to the person alleged to have received the money.

#### **Findings And Declarations**

40. For the foregoing reasons this court makes the following findings and declarations;

- i. This Court find and declares that the properties L.R. NO. Kiambaa/Thimbigua/5746 and LR NO. 225/Residential Plot-Oloolotikoshi Trading Centre-Kajiado County are matrimonial properties .



- ii. This court declares that the division of Applicant and Respondent shares in the properties L.R. NO. Kiambaa/Thimbigua/5746 and LR NO. 225/Residential Plot-olooloitikoshi Trading Centre-Kajiado County be distributed equally between the Applicant and Respondent on a 50:50 basis.
- iii. This Court declares that the Respondent is entitled to Motor vehicle registration number KCG 533B Toyota Prado;
- iv. This Court declares that 100% of the value held by the Applicant in the motor vehicle registration number KCE 299A is held by the Applicant in trust and for the beneficial interest of the Respondent; The Applicant shall refund the sum of Kshs.985,000/= to the Respondent within Thirty (30) days; in default the vehicle, be valued and sold and the proceeds be paid to the Respondent.
- v. This court hereby finds and declares that the Applicant is entitled to Motor vehicle registration number KCP 487C Toyota Harrier;
- vi. The Applicant's claim for Kshs.1.5 Million is found to be devoid of merit and it is hereby dismissed.
- vii. Each party shall 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;

N/A – by the Applicants Advocate

Applicant - Absent

Advocate for the Respondent - Absent

Respondent – present

