



REPUBLIC OF KENYA



KENYA LAW
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**JRKN v RGN (Originating Summons 49 of 2007)
[2025] KEHC 4596 (KLR) (Family) (8 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4596 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ORIGINATING SUMMONS 49 OF 2007
HK CHEMITEI, J
APRIL 8, 2025**

BETWEEN

JRKN PLAINTIFF

AND

RGN DEFENDANT

JUDGMENT

1. In the Originating Summons dated 16th October 2007 the Plaintiff seeks orders that she is entitled to 50% share in the properties mentioned therein namely:-
 - (a) LR Mainland North /Section 1/ 7X3,7X4,1XX6
(Apartment 242).
 - (b) LR No. 209/ 1XX54 .
 - (c) LR No. 209/1XX55.
 - (d) Kajiado/Kaputiei North 1XX5.
 - (e) LR No. 1XX54/3 Maragua.
 - (f) Nginda/Samar/Block 2XX6.
 - (g) Nginda/Samar Block 2XX5.
 - (h) LR No. 2X9/8XX6/2X4.
 - (i) Kajiado/Kaputiei North/1XX0.
 - (j) Kajiado/Kaputiei North1/1XX5.



- (k) Beach plot in Likoni Mombasa.
 - (l) Kajiado/Kaputiei/6XX4.
 - (m) Other properties in Juja and Mombasa.
 - (n) Motor vehicles registration numbers KAK 0X4 Z m/benz, KAM 2X9 pick up, KAH 7X7 range rover, KAD 9X2 M/BENZ.
 - (o) Shares in Themis Investment limited, Rural Assets Credit Limited, Themis Industrial Limited and Intra Trade (UK).
2. The Respondent in response swore a replying affidavit dated 29th November 2007.
 3. The matter after a long period proceeded to a full trial where the Plaintiff testified and called one witness. The Defendant on his part testified and did not call any witness.
 4. Both parties adopted their statements which are on record in establishing their case.
 5. What can easily be gleaned from the entire spectrum of the evidence by both sides is that they cohabited as husband and wife from the year 1984 and they were blessed with two children. The third child however was sired by the Defendant in another relationship but she was brought in under their care and custody.
 6. They stayed together till the year 2004 when the Plaintiff left the matrimonial home ostensibly because of the Defendant's cruelty. She thereafter filed for a divorce which this court, Muchelule J (as he then was) granted.
 7. The children of their marriage have since grown and they are now adults living separately from the parents.
 8. The Plaintiff testified that she used to work for two airlines, namely, Pan-American and Sabena until sometimes later when she decided to quit so as to concentrate on the family businesses. According to her this was with the Defendant's consent.
 9. During this period as well, she took care of their children including preparing and dropping them to school beside other chores undertaken by a mother.
 10. She also testified that she took care of the Defendant as a wife and that she was heavily involved in the companies especially Themis Investment Limited which had major contracts including airlifting Kenyan soldiers to the former Yugoslavia.
 11. In the course of time, they manage to acquire series of properties including the matrimonial home at Loresho among others. The said home was bought through a loan or mortgage obtained in the name of the Defendant.
 12. The repayment was through the business ventures in which they were involved in. It was also during this time that he was introduced in the Themis Investment company where he was a signatory to the accounts.
 13. She said that she heavily contributed as well to the acquisition through her salary and allowances she earned when working with the aforementioned airlines.
 14. The sum total of the Plaintiff's case therefore was that what was acquired during coverture whether by the Defendant or through the companies were matrimonial property and therefore entitled to a half share thereof. That although her financial footprints may not be very evident, she was convinced that



- she contributed much as a wife and a home maker and more importantly when she worked for the said airlines.
15. As a matter of fact, she testified that at some point the Defendant was jobless and it was her who maintained the family singularly.
 16. She also denied the allegations that she was out much of the time when working for the airlines and that it was basically almost half a month and the rest of the days she was at home.
 17. Further that what she earned as a salary was such that it was enough to sustain the family.
 18. The Defendant on the other hand denied that his stay with the Plaintiff was what one can term as a proper marriage but instead they stayed intermittently for she was always on the move considering the nature of her work.
 19. He denied that the Plaintiff contributed to the acquisition of the properties since her salary was too meagre. On the contrary he was the one who took the children to the best schools and paid for them and that there was not much contribution from the Plaintiff.
 20. As regards the companies, he testified that the Plaintiff had nothing to do with them and her name featured once as a signatory to the accounts and she was later kicked out because she issued stale cheques which gave him much problems with the bankers. He said that she was never a shareholder or a director of any of the companies.
 21. He denied that the Plaintiff contributed to the acquisition of the matrimonial home at Loresho as he single handedly took out a loan facility which he paid without her input.
 22. He further denied that the Plaintiff had anything to do with the companies and their incorporation and if anything, she has never been a director of any of them.
 23. It is noted that Pw2 simply came and reproduced the valuation report of some of the mentioned properties which according to him have either been sold many years ago or they belong to other third parties who are not in this matter and or simply strange to him as he was not the registered owner.
 24. The court thereafter directed the parties to file their written submissions which they complied.
 25. The Plaintiff's submissions are dated 24th May 2023 and the Defendant's 18th June 2024.
 26. She submitted that the properties in questions constituted matrimonial properties and she relied on Section 6 of the *Matrimonial Property Act* No 49 of 2013 as well as NWM.V. KNM (2014) eKLR.
 27. That she heavily contributed to the acquisition of the same and was thus entitled to half a share thereof.
 28. She further submitted that the property held in the name of the company must also be subjected to the same share of contribution and she relied among others on *Prest V. Petrodel Resources Ltd & Another* (2013) UKSC 34 Supreme court of United Kingdom.
 29. The Defendant on the other hand vide his submissions dated 18th March 2024 vehemently objected to the line taken by the Plaintiff. While relying on *AKM V NNNN* (2019) eKLR it was evident that the Plaintiff did not prove that the properties were indeed matrimonial.
 30. That she did not in any way make any contribution to their acquisition and in any case most of those properties were no longer in existence since some were auctioned or are in the names of other parties or were completely nonexistence.

Determination



31. I have carefully gone through the proceedings conducted by my earlier colleagues as well as the submissions on record and the cited authorities.
32. What is evident is that the Plaintiff and the Defendant were husband and wife for all intent and purposes. The divorce proceedings under Case Number 100 of 2013 states as much.
33. The Defendant acknowledges that they parted ways in January 2004 and save for the children whom both of them attended to, they lived separately till the divorce proceedings went through on 16th June 2017.
34. Looking therefore at the whole spectrum from 1984 to 2004, a period of close to 20 years it is not in doubt that they lived as husband-and-wife contrary to the assertion by the Defendant that they lived intermittently. It means therefore that whatever decisions taken at that time whether to purchase or to sale properties were made during coverture and the only issue for this court to determine is the contribution by each of them.
35. I have no doubt in my mind that LR No. 209/8336/244 Loresho Nairobi is a matrimonial home just as it was admitted by the parties. There is sufficient evidence that that is where they stayed and raised their children.
36. The same was purchased through the loan /mortgage taken by the Defendant. The repayment of the loan was undertaken during coverture and the Plaintiff as a wife in her own way contributed to the repayment albeit indirectly.
37. The business of taking care of the family, the children and the Defendant in ensuring comfort at home in many ways may not be quantified but it is now considered and generally accepted as a contribution to the family property acquisition.
38. Section 14 of the Act provides as hereunder:-
 - “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.”
39. To this extent therefore I find that though the Loresho home is registered in the name of the Defendant acquired through a mortgage I hold that the Plaintiff played a part in its acquisition.
40. Taking the whole issue into consideration I find that in totality the Plaintiff is entitled to 35% thereof.
41. As regards the rest of the properties especially those enumerated on the face of the OS I agree with the Plaintiff that although she was not a director of the companies I find for instance that Themis Investments Limited was registered on 6th October 1985 and the directors are the Defendant and one Mureka Gatheca, she however gave the Defendant the opportunity to undertake such ventures like running the said company without any let or hinderances.
42. In other words, although he is insulated by the company laws, he cannot however wish away the contribution by the Plaintiff. A classic example which is not disputed is the contract to airlift the Kenyan soldiers to Yugoslavia which brought in substantial sum of income to the company. As a result of the said earnings, it is evident that the couple through the said company managed to accumulate property.



43. As for the other companies I find that most of them were acquired after the year 2004 when the couples had parted ways. It will be remiss for this court to deal with the said companies without any evidence of contribution by the Plaintiff post 2004.
44. The same goes for the bank accounts. There was no sufficient evidence to suggest or prove to the court that the Defendant or the company for that matter held accounts in the banks suggested in the oral evidence.
45. It will not be reasonable and equitable to allow the Defendant under the guise of the company law to hide whatever he owned when the marriage was subsisting. What he holds under the company is on trust for and on behalf of his former wife.
46. In the premises the Defendant's entitlement whether through shares or shareholding in Themis Investments Limited constitute 35% of the Plaintiff's contribution.
47. In *Mradula Suresh Kantaria v. Suresh Nanalal Kantaria* (2007) eKLR the court extensively stated that:-

“Charlesworth and Morse: Company Law (14th Edition) at paragraph 27 – 28, lays down the applicable principle of law thus:

“It was established in *Solomon versus Solomon and Co. Ltd* that a registered company is a legal person separate from its members. This principle may be referred as ‘the veil of incorporation’. In general the law will not go behind the separate personality of the company to the members, so that, for example in *Macaura Versus Northern Assurance Co. Ltd*, ante, it was held that the largest shareholder had no insurable interest in the property of the company. Similarly an employee cannot bring an action for unfair dismissal against the majority shareholder of a company, which employed him. However there are exceptions to the principle in Solomon's case where the veil is lifted and the law disregards the corporate entity and pays regard instead to the economic realities behind the legal façade. In these exceptional cases the law either goes behind the corporate personality to the individual members, or ignores the separate personality of each company in favour of the economic entity constituted by a group of associated concerns.”

Applying the above principal in the case of *Corporate Insurance Co. Ltd V. Savemax Insurance Brokers* (2002) IEA 41, Ringera, J (as he then was) stated at p.46: -

“And it is a well known principle of company law that the veil of incorporation may be lifted where it is shown that the company was incorporated with or was carrying on business as no more than a cloak, mask or sham, a devise or stratagem for enabling the directors to hide themselves from the eye of equity. That may well be so if on the evidence it is clear that the directors have dealt with the assets and resources of the company as their personal bounty for use for their own purposes. Such facts may well be disclosed in the examination of the directors or in affidavits filed... On principle I see no reason why the veil cannot be lifted at the execution stage”



Considering the same principle as applied in the case above Mbaluto, J also in Caneland Ltd V. Dolphin Holdings Ltd and another (1999) I EA, 29 stated thus –

“As shown above, the courts have refused to permit the logic of the principle laid down in Solomon’s case to apply ‘where it is too flagrantly opposed to justice, convenience or interests of the Revenue (Gower- Ed at 112) and will disregard the fundamental principle of corporate personality if justice warrants it. Equity will not permit a statute or indeed law to be a cloak for fraud. In my judgment this is one of those cases where the corporate veil ought to be lifted because given the special circumstances of this case, it would be tantamount to allowing a debtor to hide behind the cloak of corporate identity to avoid meeting its legal obligations...”

48. In view of the above findings, I therefore hold that in the matrimonial property proved in this court the Plaintiff holds 35% and the Defendant 65 %. The higher percentage in my view is for the simple reason that the Defendant was hands on all along and several loans were obtained by him to sustain the same and by extension the education and upkeep of the children.
49. The only unproven fact is the registration of the properties. I have perused the records and it appears to me that there are no much records indicating the registered proprietors of the said assets. Nothing however is lost to the parties as they shall be at liberty to apply.

Conclusions

- (a) The Plaintiff holds a share of 35 % in the matrimonial properties had and obtained before January 2004 whether registered in the name of the Defendant or Themis Investments Limited.
- (b) The parties be at liberty within 90 days from the date herein to engage a professional registered valuer to value the same and in default the Deputy Registrar of this court be at liberty to appoint one.
- (c) Once the above (b) is done the parties be at liberty to buy off each other and in default the property be sold in a competitive open market and the proceeds shared in the ration of 35% and 65% respectively.
- (d) The costs of the above exercise shall be born by both parties equally.
- (e) Costs in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI ON

8TH DAY OF APRIL, 2025.

H K CHEMITEI

JUDGE

