



**DLWM v DOW (Matrimonial Cause E005 of 2023)
[2025] KEHC 5944 (KLR) (13 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 5944 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
MATRIMONIAL CAUSE E005 OF 2023**

WM MUSYOKA, J

MAY 13, 2025

BETWEEN

DLWM PLAINTIFF

AND

DOW DEFENDANT

JUDGMENT

1. An originating summons initiates a suit, not an application, and the parties to it are plaintiff and defendant. In that respect, I shall designate the parties hereto as plaintiff and defendant.
2. These proceedings were initiated at the instance of the plaintiff, Daisy Linda Wesonga Mukoya, by way of an originating summons, dated 9th November 2023, for declarations that Bukhayo/Bugengi/1XXX7, acquired and developed during matrimony, and registered in the joint names of the plaintiff and the defendant, is matrimonial property, to be divided equally between the 2 parties hereto; assorted household items and appliances, all purchased by the plaintiff but in the exclusive possession of the defendant, be declared to be matrimonial property, to be given exclusively to the plaintiff; and such other orders as the court may make; and costs of the proceedings.
3. In the affidavit, sworn by the plaintiff, on 9th November 2023, a background is given. The marriage between the parties was dissolved by divorce decree in Kakamega CMCDC No. E023 of 2023. During the marriage, the two acquired Bukhayo/Bugengi/1XXX7, which was subsequently registered in their joint names. The developed the same thereafter, by constructing a permanent house and establishing a fishpond on it, among other developments. She avers to have made both direct and indirect contributions to the said acquisition and development of the property. She asserts that she earned a salary, part of which was used in direct contribution to the acquisition and development of the property. She avers that she also conducted her spousal and maternal duties as the wife of the defendant and the mother of their child.



4. She has annexed documents to her affidavit, to support her case. There is a decree nisi, issued in Kakamega CMCDC No. E023 of 2023, on 6th July 2023. There is a letter appointing her to the position of an Audit Associate II, in the Government of the Republic of Kenya, at the Office of the Auditor General, dated 21st January 2014. There are two copies of payslips for June 2018 and October 2023. There is a certificate of official search, for Bukhayo/Bugengi/1XXX7, dated 19th September 2023, showing her as joint owner with the defendant. There is a bundle of receipts, some in her name, some not, for assorted building materials. There are also MPesa statements, for different individuals, whose relationship with this case has not been amplified.
5. The defendant has responded to the claim, vide his affidavit, sworn on 22nd April 2024. He avers that he contracted marriage with the plaintiff in 2016, and they begot one child, and that they divorced in 2023. He avers to have solely bought Bukhayo/Bugengi/4750, which was subsequently merged with another to create Bukhayo/Bugengi/1XXX7, without any form of financial support from the plaintiff. He asserts that Bukhayo/Bugengi/1XXX7 was registered in the joint names of the parties for the benefit of their minor child. He further avers to have solely developed Bukhayo/Bugengi/1XXX7, where he put up two single rooms, and furnished them. He states that, as he was based at Turkana, he would send money to the plaintiff to purchase materials for the development of Bukhayo/Bugengi/1XXX7. Even for the household goods, he asserts that he was the one who purchased them, and not the plaintiff. He also avers to have been the one meeting the school fees needs of the minor, and to the one settling the utility bills. He avers that in cases of co-ownership; the co-owners are required to furnish evidence of their contribution to the acquisition of the property. He states that the plaintiff had failed to disclose that he had bought for her a motor vehicle, registration mark and number KCK XXXD.
6. The defendant has attached documents to his declaration of facts. There is a copy of a certificate of marriage, dated 8th June 2016. There is also a letter from the County Government of Turkana, dated 25th February 2015, appointing him Fisheries Officer II. There are two payslips, for May 2016 and June 2018. There are land sale agreements for Bukhayo/Bugengi/4750, dated 5th March 2018 and 19th November 2016, between the defendant and a Jason Otakwa Mbalu. There is a mutation form for Bukhayo/Bugengi/4750, to excise the two portions, sold by Jason Otakwa Mbalu. There is a bank statement from Kenya Commercial Bank, with respect to an account operated there by the defendant. There is a bundle of sales receipts, some in the name of the defendant, for purchase of assorted construction materials. There is a receipt, in the name of the defendant, for purchase of sofa sets. Finally, there is a copy of vehicle record, for motor vehicle, registration mark and number KCK XXXD, dated 5th December 2023, showing it to be registered in the name of the plaintiff, since 15th December 2016.
7. The plaintiff swore a supplementary affidavit, on 1st July 2024. She avers that she contributed to the purchase of the land in the 2016 transaction, although she was not present to sign the agreement. She asserts that she paid the total sale price of Kshs. 250,000.00, to the seller, Jason Mbalu Otakwa. She dismisses the sale agreement of 5th March 2018 as a forgery. She asserts that the property was registered as jointly owned as it was their matrimonial home. She contests that the defendant solely developed the property and gives the names of the various individuals that she engaged to conduct certain works on the property, in the development, indicating how she paid each one of them. She asserts that she contributed more to that construction than the defendant, who, she argues, has not exhibited his contribution. She acknowledges that the defendant did send to her amounts of money that she has specified in her affidavit, in 2016, 2018, 2019, 2020 and 2021, asserting that that was the only money he send to her, for a construction which cost over Kshs. 6,000,000.00. She contests the claim that the defendant bought all the household goods, pointing out that she was the one who bought the fridge, dining table, one sofa set, three beds and three mattresses, assorted utensils, a cooker and two



- gas cylinders. She asserts that the defendant did not pay school fees for the minor. She estimates her contribution to the acquisition and development to be 70%. She states that she bought the car with money raised from a loan, which she solely maintained, without support from the defendant.
8. She has attached assorted documents to support her case. There is a copy of the decree nisi, issued in Kakamega CMCDC No. E023 of 2023, on 6th July 2023, and decree absolute, issued from the same cause, on 20th December 2023. There is a breakdown of the moneys paid to Jason Mbalu Otakwa for the purchase of the land. She has attached a bank statement, from Kenya Commercial Bank, but without disclosing whose account it was. There are also deposit slips or advice and bank transfers, by her into an account operated by Mbalu Otakwa. There is a title deed, dated 10th April 2019, for Bukhayo/Bugengi/1XXX7. There is a certificate of official search, for Bukhayo/Bugengi/1XXX7, dated 23rd May 2024. There is also an account statement of moneys paid to a Peter Ndonga, for steelworks and fabrication for doors windows and frames. There is an MPesa statement, in respect of a number registered to the plaintiff, with respect to the payments to Peter Ndonga. There are assorted payment statements, supported by MPesa statements, indicating various individuals that the plaintiff paid moneys to during the construction on Bukhayo/Bugengi/1XXX7.
 9. The matter was canvassed by way of viva voce evidence, based on affidavits, following directions that had been given on 27th June 2024.
 10. The oral hearing began in earnest, on 20th January 2025, when the plaintiff took to the witness stand. She testified that she and the defendant were divorced by court decree, and had between them one child. She stated that she was in employment with the Auditor General, and had obtained a loan from a Sacco society, linked to her employment, and deductions were being made from her salary. She said that she and the defendant had acquired land, being Bukhayo/Bugengi/1XXX7, which was registered in their joint names. She stated that she contributed to the acquisition of that land. She sent moneys to the seller. She explained that the property was bought in two bits. The first phase was for 0.005 hectare, to which she contributed Kshs. 200,000.00; and the other phase was for 0.02 hectare, in respect of which she paid the full sum of Kshs. 250,000.00. She said that the plot was thereafter developed, where a residential house was constructed, being their matrimonial home. She stated that the defendant did the walling of the house and the floor, while she did the rest. She averred that she engaged the fundis who did the works, and paid them through MPesa. She also testified that she was the one responsible for doing the perimeter wall. She denied that the defendant sent her money for construction, saying that the money sent to her by him, was for her house rent and for the upkeep of the child. She asserted that she also used to send to him money, mentioning Kshs. 677,410.00, as an example. She asserted that the house was constructed for their own use, and not for the benefit of the minor.
 11. Regarding the household goods, she testified that the defendant was claiming what she had acquired. She mentioned the fridge, the five-by-six bed and mattress, two double-decker beds and assorted utensils. She also mentioned a cooker and two gas cylinders. She testified that she did not have the receipts for the items, as she had left them in the house, to which she no longer had access.
 12. On the school and school-related expenses for the minor, she testified that she had all along been the one meeting them, save for 2023, when the defendant paid the same. With respect to the motor vehicle, KCK XXXD, she testified that the same was bought by her with moneys loaned to her by her Sacco, the Ukaguzi, of Kshs. 1,000,000.00, which she topped up, as the purchase price was Kshs. 1,210,000.00. She said that she bought the car on 31st December 2016. She asserted that the defendant did not contribute a cent to that purchase. She stated that the vehicle was registered under her name, and that she was the one who was maintaining it.



13. During cross-examination, she explained that for the first transaction, for purchase of the 0.005 hectare, she sent the money to the father of the defendant, and she had an MPesa account to support her case. She said she was not present when the agreement was signed, and that it was the defendant who had sourced the land. She insisted that the second agreement was forged. On school fees for the minor, she stated that the defendant paid for only two terms. She asserted that she contributed 70% towards the purchase and development of the land.
14. On his part, the defendant testified that he was the one who sent most of the purchase money to the seller, asserting that the plaintiff did not contribute to that purchase. He said he paid a total of Kshs. 633,000.00, for both portions. For development, he testified that he sent the money to the plaintiff to buy the building materials. He stated that he sent to the plaintiff sums between Kshs. 200,000.00 and Kshs. 400,000.00, adding that could not be all for rent. He said he was unaware that moneys had been sent to his father, for purchase of construction materials, adding that it was not his father who was constructing the house. He said that the property was registered in their joint names as the plaintiff was his wife at that time. He stated that he had developed the property further, by putting up two more houses, a fishpond, and a chicken coop. He stated that they had two matrimonial homes, at Bungoma and Kakamega, and that he bought all the items for the Busia house, but they shared the cost for the items for the Kakamega house. He said that they co-shared the cost of the motor vehicle, asserting that the plaintiff did not purchase it alone, for the vehicle was paid for in cash. He asserted that as a result there were no documents for the vehicle.
15. During cross-examination, the defendant asserted that he bought the two portions that later comprised Bukhayo/Bugengi/1XXX7. He said that the registration of the property happened when the two were spouses. He stated that their rented matrimonial home was at Kakamega, and that the Busia property was intended to be a matrimonial home. He conceded, upon being shown documents, that the plaintiff had contributed an amount of money, to the purchase of the plot, but he insisted that she did not pay for the second plot all on her own. He said that when the agreement was being executed, the plaintiff was working at Bungoma, and did not participate in the transaction. He insisted that he contributed 90% of the purchase price, saying that the contribution by the plaintiff was Kshs. 120,000.00. On the construction of the house, he testified that although he was based at Turkana, he was the one who supervised the same, as he would come over for that purpose. He said his father was not on the ground. He conceded, though, that the plaintiff was also on the ground. He mentioned the names of fundis but conceded that he had not mentioned them in his papers. He also said that he could not tell what he spent on specific works. He stated that the persons named by the plaintiff, in her papers, were not the fundis in that construction. He said the further developments done after divorce were without the consent of the plaintiff.
16. On the motor vehicle, he said that he contributed 50% of the purchase price. He said that the same was paid for in cash, and that he had taken a loan. He conceded that he had no documents to support his position. He said that he used to maintain the vehicle when he was with the plaintiff.
17. During re-examination, he stated that the plaintiff used to supervise the works, and that he used to send her money for the purpose of the construction. He said that the fundis were mostly supervised by the plaintiff.
18. The parties filed written submissions and cited judicial precedents. I have read the written submissions, and noted the arguments made.
19. The plaintiff identifies 3 issues for determination; around whether Bukhayo/Bugengi/1XXX7, and its development, is matrimonial property, whether the Bukhayo/Bugengi/1XXX7 was jointly purchased and developed by the plaintiff and the defendant, and what share is each party entitled



- to in Bukhayo/Bugengi/1XXX7; whether the household goods in Bukhayo/Bugengi/1XXX7 is matrimonial property; and whether the plaintiff is entitled to them exclusively, and whether the motor vehicle is matrimonial property or the exclusive property of the plaintiff.
20. On whether Bukhayo/Bugengi/1XXX7 is matrimonial property, it is submitted that the same is in the joint names of the parties and was so registered during the currency of the marriage. It is submitted that as the same was registered in the joint names of the parties, it was meant to be matrimonial property, unless the contrary is established. It is submitted that there was no proof of a contrary intention. She cites *EKTM vs. ECC* [2022] eKLR (Muchelule, J), on what constitutes a matrimonial home, and matrimonial property, and on how the same is to be divided between the parties, on the principle of contribution. She submits, based on the authority cited, that she was entitled to 70% of Bukhayo/Bugengi/1XXX7. She then contradicts that by citing *IC vs. SS* [2024] KEHC 3316 (KLR)(Mrima, J), where the court went for equality, with respect to property acquired during marriage, and submits that that is what she is entitled to out of Bukhayo/Bugengi/1XXX7.
 21. On whether Bukhayo/Bugengi/1XXX7 was jointly purchased and developed by the parties hereto, it is submitted that the plaintiff contributed to the acquisition. It is argued that the defendant conceded that the plaintiff had sent money to the seller, directly, and that she would not have been registered as joint owner if there had been no contribution from her. On the development of the property, it is submitted that the plaintiff produced documentary evidence, pointing to the fact that she incurred expenses, in works around plastering, plumbing, electrical, carpentry, steel, tiling and paints works on the house, and also around sinking of the borehole and purchase of pumps for the house. There is also submission that the plaintiff used to send money to the respondent.
 22. It is submitted that, as Bukhayo/Bugengi/1XXX7 was jointly acquired and developed, the same ought to be shared equally between the 2 parties.
 23. On the household goods, the plaintiff submits that the defendant had admitted that he worked at Lodwar, which meant that he kept and maintained a residence there, which must have had household goods, while the plaintiff had been resident at Kakamega, with household goods there. It is submitted that since each had household goods in their respective separate residences, it followed that the household goods in the Busia house were meant for both and ought to be declared to be matrimonial property. The plaintiff claims the household goods on the basis that she has provided proof that she bought them.
 24. On the motor vehicle, the plaintiff submits that she had provided evidence that she paid for the vehicle, and that it was registered in her name, and that she all along maintained it.
 25. The defendant identifies two issues: which assets are to be considered as matrimonial property, and what was the contribution of the plaintiff to the purchase of the property, and how it should be shared. Although framed as two issues, they are three in number.
 26. On the first issue, the defendant cites section 6 of the *Matrimonial Property Act*, Cap 152, Laws of Kenya, to assert that although Bukhayo/Bugengi/1XXX7 was acquired during matrimony, it was solely acquired by him, as he was the only one who signed the sale agreements. He submits that the plaintiff was included as co-owner purely for the benefit of their child. The defendant submits that the household goods were not matrimonial property, as he had provided proof that he was the one who bought them exclusively. He also submits that the motor vehicle was bought by him, with loan moneys, and it was only registered in the name of the plaintiff out of love.
 27. On contribution, he submits that around sections 2, 6, 7 and 9 of the *Matrimonial property Act*. He submits that Article 45(3) of *the Constitution* does not impose a 50:50 sharing of assets acquired during



marriage. He cites PNN vs. ZWN [2017] eKLR (Waki, Azangalala, & Kiage, JJA) and JOO vs. MBO; Federation of Women Lawyers (FIDA Kenya) & another (Amicus Curiae) [2023] KESC 4 (KLR) (Mwilu, Ibrahim, Wanjala, Ndung'u & Lenaola, SCJJ), on assessment of what the plaintiff could be entitled to. He asserts that the plaintiff did not contribute in any way in the acquisition of any of the assets, and was not entitled to any share of them. He submits that the plaintiff should get nothing, and her suit ought to be dismissed with costs.

28. There is only one issue for determination, division of the property as between the plaintiff and the defendant.
29. The most recent decision on these matters is that in JOO vs. MBO; Federation of Women Lawyers (FIDA Kenya) & another (Amicus Curiae) [2023] KESC 4 (KLR)(Mwilu, Ibrahim, Wanjala, Ndung'u & Lenaola, SCJJ), where several principles were stated: that the equality principle in Article 45(3) of *the Constitution* did not empower the court to vary existing proprietary rights of the parties, and the other party is not entitled to a share in such property merely on account of marriage; that the guiding principle in apportionment and division of matrimonial property is that the same could only be done on the basis of what each party contributed to the acquisition of the property; among others. See also TKM vs. SMW [2020] eKLR (Ouko P, Musinga & Gatembu, JJA). I shall bear these principles in mind as I determine the issues that arise herein.
30. For the purposes of discussion, I shall assess which of the assets make up the matrimonial property, what was the contribution of the parties to their acquisition, and how they should be shared between the two.
31. Let me start with the first issue, identification of the assets which make up the matrimonial property that should be subjected to distribution. The plaintiff has identified two, the defendant claims that none of them are matrimonial property.
32. What constitutes matrimonial property is defined in section 6(1) of the *Matrimonial Property Act*, to mean the matrimonial home or homes; household goods and effects in the matrimonial home or homes; or any other immovable and movable property jointly owned and acquired during the subsistence of the marriage. It excludes property held under trust, according to section 6(2). Section 5 makes exclusions, so that property acquired or inherited before marriage is excluded from the definition of matrimonial property. Section 9, however, provides that property acquired prior to marriage, including that which is inherited, could become matrimonial property, upon the other spouse contributing upon its improvement. The definition of matrimonial home in section 2 could also be relevant, to mean property occupied or utilized by spouses as their family home, including homes owned or leased by one or both spouses.
33. So, which of the assets that were discussed in these proceedings are in fact matrimonial property?
34. I will start with what the plaintiff lists as matrimonial property. She mentions two, Bukhayo/Bugengi/1XXX7 and the household goods in the matrimonial home on that property.
35. On Bukhayo/Bugengi/1XXX7, it is common ground that this property was acquired during matrimony. It is also not in dispute that it was developed over that period. The dispute is over how it should be shared out, if at all, following dissolution of the marriage.
36. At paragraph 2 of the originating summons, the plaintiff has listed 13 items of what she describes as household goods, being a fridge, cooker, bed and mattress, dining set, iron board, 4 mattresses, 2 double-decker beds, 1 bed and mattress, a 13 kg cylinder, a 6 kg gas cylinder, assorted utensils, a sofa set and 2 water tanks. These items are said to be in the matrimonial house in Bukhayo/Bugengi/1XXX7, currently under the possession and control of the defendant. The defendant does not dispute existence



- of these items. So, it is common ground that they exist at the matrimonial property within Bukhayo/Bugengi/1XXX7. The question would be who would be entitled to them, at distribution.
37. The defendant claims that the plaintiff has not disclosed the car, registration mark and number KCK XXXD, which, according to him is also matrimonial property, as it was bought during matrimony, by him, for the plaintiff. The plaintiff counters that she bought the vehicle without support from the defendant. I see a statement from Ukaguzi Sacco, on the loan alleged to have been obtained by the plaintiff, for purchase of that vehicle. The money was allegedly paid between June 2016 and July 2018. The motor vehicle was registered in 2016, during coverture, and it would appear that that would make it matrimonial property.
 38. From the discussion above, what should emerge is that only three assets have been established as being capable of classification as matrimonial property, being Bukhayo/Bugengi/1XXX7, the assorted household items in that property, and motor vehicle registration mark and number KCK XXXD.
 39. Having disposed of the question, as to which assets make up matrimonial property for the purposes of this case, let me now turn to the second issue, what was the contribution of either of the two parties to the acquisition of the three assets?
 40. Bukhayo/Bugengi/1XXX7 is registered in the joint names of the plaintiff and the defendant. In such a scenario, the applicable law would be section 14(b) of the *Matrimonial Property Act*, which makes a rebuttable presumption on property acquired in the names of both spouses during the currency of the marriage, that the beneficial interests of both, in the property, are equal. As Bukhayo/Bugengi/1XXX7 is in the names of both parties, and was acquired during their marriage, a rebuttable presumption arises that the two have equal beneficial interest in the said property. It would be up to the defendant to rebut that presumption, as it is him claiming that he acquired the property by his sole efforts, with zero contribution from the plaintiff. The burden on the plaintiff is to establish that the property was acquired during matrimony, and once she discharges that burden, it would shift to the defendant to rebut the presumption.
 41. Section 14 should be read together with section 7, which establishes that ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition. Where the spouse, in whose joint names the property is registered, places material before the court, to assert that the property is matrimonial, then the spouse asserting that it is not matrimonial property must lead evidence to establish that, although the property was registered in the joint names of both parties, he or she acquired it as separate property, not to be shared at dissolution. I will be guided by these provisions.
 42. It is common ground that the property herein is registered in the joint names of the parties hereto. There is a copy of a certificate of official search, attached to the affidavit of the plaintiff, of 9th November 2023, dated 19th September 2023, and there is another attached to her affidavit of 1st July 2024, dated 23rd May 2024, both of which indicate that the property is registered in the joint names of the parties. There is also a copy of a title deed in respect of the same property, to the same effect. The plaintiff does not refute the joint registration.
 43. That information should raise a presumption that the property was acquired during matrimony, and that the joint registration meant that the two parties hereto own it equally. In his papers, the defendant has asserted that he acquired the asset without any contribution from the plaintiff, and that he regarded it as separate property, which means he is seeking to rebut the presumption that it was matrimonial property, equally owned by the 2 of them.



44. The plaintiff claims that she contributed to the acquisition of the property, which was why it was registered in their joint names. She asserts that she put in money towards both the acquisition and development of that property. She has attached bundles of documents to support her case. On his part, the defendant asserts that, although the property was jointly registered, the plaintiff neither contributed to its acquisition, nor its development, for he bought it solely with his own resources, and so did he develop it. He produced sale agreements, executed by him and the seller, as testimony that the plaintiff had no role in acquisition of the property, suggesting that if she had her name would be in the documents. On the development of the property, he has placed on record bundles of documents as proof that he solely developed the said asset.
45. So, what do I make of this? The material on record establishes that both parties were in paid employment, with that of the plaintiff dating to January 2014, and that of the defendant to February 2015. Both have placed payslips on record. I am satisfied that both could participate in the acquisition and development of the property in question. It also emerges, from the payslips, that the plaintiff earned more than the defendant, and bore loan burdens that were heavier. The plaintiff has attached two payslips, one for June 2018, and the other for October 2023. Her gross pay in June 2018 was Kshs. 216,072.00, with a net pay of Kshs. 103,000.00, and a loan deduction of Kshs. 21,000.00. The payslip for October 2023, indicates that she earned Kshs. 216,094.00 gross, with a net of Kshs. 120,000, after deductions, which included a loan deduction of Kshs. 26,100.00. The defendant has attached two payslips, for May 2018 and June 2018. That for May 2018 is too faint, I cannot make out its contents. However, that for June 2018 indicates that his gross pay was Kshs. 71,010.00, with a take home of Kshs. 31,201.00, after 3 loan deductions totalling Kshs. 10,280.00.
46. The plaintiff has argued that she spent more than the defendant in the acquisition of the property, and its development. Although the defendant had initially asserted that she had not contributed anything, he eventually conceded, at trial, when confronted with documents, that she did indeed contribute. He, however, insisted that her share was lower. The documents she placed on record tell a different story. I have seen her various accounts on what she spent, and who she paid, and what she paid for; matched against her bank and MPesa statements, and there can be no doubt that she spent a lot more than the defendant in the acquisition and development of the property. That she could do, given that she earned more than him, going by the payslips, and she was repaying amounts of money, for loans, that were double what he was repaying. I have equally seen receipts from the defendant, matched against bank statements. The bundle is smaller than that by the plaintiff. I have seen from the bank and MPesa statements by both parties, that moneys did indeed move between them, but none sent to the other sums more than Kshs. 600,000.00 in total. Undoubtedly, both parties contributed to the acquisition of Bukhayo/Bugengi/1XXX7, with the plaintiff spent sums of money that were on the higher side, compared with the defendant.
47. There is the argument, by the defendant, to counter the contention that the joint registration happened on account of both sides having contributed to the joint acquisition, that the joint registration was not for the beneficial interest of the plaintiff, but of their child. I have perused the title deed exhibited, as well as the certificates of official searches, none of them suggest a beneficial interest in favour of the minor. These three documents were presented by the plaintiff. The defendant did not make an effort to place before the court any document that would have established that he intended the joint registration to be for the benefit of the said minor. As it is, there is nothing to prove that claim.
48. Regarding the household goods, the plaintiff has pleaded that she has no documentary proof, as the documents relating to the purchases of those items were left in the matrimonial property in Bukhayo/Bugengi/1XXX7, after the break-up of the marriage, and, therefore, she has attached no proof, and presented none at trial. From the annexure by the defendant, I have seen the payment of Kshs.



- 120,000.00 for sofa sets, in 2016, issued to him. Other than this evidence, I have nothing to establish, one way or the other, that either party bought the assorted household items in the matrimonial home at Bukhayo/Bugengi/1XXX7.
49. Regarding the motor vehicle, the same is registered in the name of the plaintiff. She has attached documents to prove that she has been maintaining it. I have also seen accounts, from her Sacco and the bank, detailing how the moneys for purchase of the car were disbursed. The defendant claims to have had bought the vehicle for her. He has provided no proof thereof. I am persuaded that the motor vehicle was bought by the plaintiff, with her own resources, with no assistance from the defendant. It has not been demonstrated that the defendant used it at any one time, for it to be said that, although acquired during matrimony, it was matrimonial property. Even if it was matrimonial property, by dint of having been acquired during coverture, the available evidence points to it having been bought solely by the plaintiff, using her own resources, it was used solely for her activities, and she solely maintained it. I shall conclude that it was separate property belonging to her.
50. The plaintiff also alleges that she contributed indirectly to the acquisition of the assets, through home management and taking care of the sole child of the marriage. She has attached documents to support her contention. I have seen documents from the academy that the minor is attending, a school centre where school-related items were purchased, and an MPesa statement showing payments made to that academy. The defendant stated that he would send money to the plaintiff, for rent and domestic expenses. I note that the child was 6 years as at the date these proceedings were being initiated, and was, no doubt, up to that point, continuously in the custody, care and protection of the plaintiff, as I note that the defendant was in employment in Turkana. The two parties lived apart on account of the demands of their employment, so it cannot be said that each took care of the other daily, but the care and protection of the minor by the plaintiff was direct contribution. None of them appears to have resided on permanent basis, at Bukhayo/Bugengi/1XXX7, for one was working in Turkana and the other at Kisumu.
51. From the material above, I am persuaded that the plaintiff did contribute to the acquisition of the assets in question, both directly and indirectly. Directly from the evidence that she had income from which she could contribute to the acquisition and development of Bukhayo/Bugengi/1XXX7. Indirectly, through being the one who supervised the construction of the house on Bukhayo/Bugengi/1XXX7, and the one who was raising the only child of the family. She was the one who was solely responsible for the education of the said child, as the defendant was away from the family, working at Turkana. She bought and maintained the car. On the household items, I have no material proof that she acquired them. The defendant proved that he bought the sofa set. However, given the income difference between the two, and the fact that it was the plaintiff who was on the ground, during the construction of the house, I am persuaded that she was more likely than not to be the one who acquired the household goods in question.
52. That should take me to the next consideration, about how the said assets are to be shared out, now that the marriage has been dissolved. On the sharing of Bukhayo/Bugengi/1XXX7, the plaintiff pleads for equal distribution, in her originating summons. However, in her written submissions, she prevaricates between a sharing of 50:50 and 70:30. Parties are bound by their pleadings. The plaintiff pleads for a sharing ratio of 50:50. She did not amend her pleadings to push for a 70:30 sharing. The evidence clearly points to her contributing more than 50%. Indeed, I am persuaded that she established that her contribution was in the region of 70%, but her pleadings tie my hands. On the household goods, she provided no proof that she acquired the same. On the car, the evidence is in her favour.
53. The final orders are:



- a. That I declare that Bukhayo/Bugengi/1XXX7 is matrimonial property, to be shared equally between the plaintiff and the defendant;
- b. That I declare that the motor vehicle, registration mark and number KCK XXXD, belongs to the plaintiff;
- c. That Bukhayo/Bugengi/1XXX7 shall be valued, within the next 6 months, with both sides sharing the valuation costs equally, after which the defendant shall pay 50% of its value to the plaintiff, within 6 months of the valuation;
- d. That, in default of the above happening, within the 1-year period given, in the order above, the plaintiff shall be at liberty to cause the said property to be sold, and the proceeds of sale shared equally between the two parties hereto; and
- e. That each party shall bear their own costs.

DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 13TH DAY OF MAY 2025.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Cleveland Mwebi, instructed by CM Mwebi & Company, Advocates for the plaintiff.

Ms. Nyabuto, instructed by Maragia Ogara & Company, Advocates for the defendant.

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