



REPUBLIC OF KENYA



**FWK v GK (Originating Summons E048 of 2023)  
[2025] KEHC 6866 (KLR) (Family) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6866 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ORIGINATING SUMMONS E048 OF 2023  
PM NYAUNDI, J  
MAY 15, 2025  
IN THE MATTER OF THE MATRIMONIAL PROPERTY ACT  
AND  
IN THE MATTER OF THE MARRIAGE ACT**

**BETWEEN**

**FWK ..... APPLICANT**

**AND**

**GK ..... RESPONDENT**

**JUDGMENT**

1. Vide Originating summons dated 15<sup>th</sup> May 2023, the Applicant herein seeks that the following assets be declared as matrimonial property and that they be disposed of and the proceeds shared equally.
  - a. Plot No. [particulars withheld] in Housing Settlement Scheme in Nairobi County
  - b. Kagaari/ Kigaa/[particulars withheld] in Embu County
  - c. Plot No. [particulars withheld] Kayole River Bank in Nairobi County
  - d. Property Situate in [particulars withheld] in Muranga County
2. The first three properties are registered in the joint names of the Applicant and the respondent, whilst the property in Muranga is said to be registered in the sole name of the respondent. The originating summons is supported by the affidavit of the applicant sworn on 15<sup>th</sup> May 2023.
3. The respondent did not participate in the proceedings. He was served at all stages of the proceedings, but failed to file response or attend court.



4. The matter proceeded by way of viva voce evidence. The applicant and respondent marriage were dissolved vide certificate of making decree nisi absolute dated 29<sup>th</sup> April 2022 issued by the Court in Milimani Commercial Court, Divorce Cause No. E1387 of 2021.
5. In the course of the marriage the following properties were acquired jointly
  - a. Plot No. [particulars withheld] in Housing Settlement Scheme in Nairobi County
  - b. Kagaari/ Kigaa/[particulars withheld] in Embu County
  - c. Plot No. [particulars withheld] Kayole River Bank in Nairobi County
  - d. Property Situate in [particulars withheld] in Muranga County
6. The applicant presented documents that showed the properties in [particulars withheld], [particulars withheld] and [particulars withheld] were acquired jointly. However, no documentation was presented in relation to the ownership of the parcel of land in [particulars withheld].
7. Pursuant to the directions of the Court, the Applicant filed submissions dated 3<sup>rd</sup> January 2025. She identifies the following as the issues for determination-
  - a. Whether the Suit properties Comprise matrimonial property
  - b. Whether the Applicant contributed towards the acquisition and development of the matrimonial properties
  - c. Whether the properties should be disposed of and proceeds shared
8. On the first issue, the Applicant relies on Section 6 of the *Matrimonial property Act*, which defines Matrimonial property. On the 2<sup>nd</sup> issue, contribution by the applicant to the acquisition and development of the property, reference is made to Sections 2, 7 and 9 of the *Matrimonial Property Act*, Article 45 (3) of the *Constitution of Kenya* and the decisions in *PNN v ZWN* [2017] eKLR and *CWM v JPM* [2017] eKLR.
9. It is submitted that the Court should direct that all the properties be sold and proceeds shared equally.

### **Analysis and Determination**

10. The issues for determination are
  - a. What if any properties comprise matrimonial property?
  - b. What is the Applicant's share to the matrimonial properties?
  - c. What are the consequential orders?
  - d. Who should pay costs?
11. On the 1<sup>st</sup> issue, whether any of the properties comprise matrimonial property, I am guided by Section 6 of the *Matrimonial Property Act* that 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.



12. Basically, for property to qualify as matrimonial property, it must meet the definition in Section 6 quoted above. The parties got married in 1977 and the marriage was dissolved in April 2022. The Umoja property was acquired on 17<sup>th</sup> October 2013 as captured in the Transfer form and sale agreement of even date. Title issued for the Kagaari/ Kigaa/ [particulars withheld] property on 31<sup>st</sup> March, 2009. The Kayole River Bank property was acquired on 28<sup>th</sup> September 2011 as evidenced by sale agreement. From the foregoing it is clear that the properties were acquired in the joint names of the applicant and respondent during the pendency of the marriage. I find therefore that the following properties comprise matrimonial property.
- a. Plot No. [particulars withheld] in Housing Settlement Scheme in Nairobi County
  - b. Kagaari/ Kigaa/[particulars withheld] in Embu County
  - c. Plot No. [particulars withheld] Kayole River Bank in Nairobi County
13. There is no evidence adduced as relates to the Muranga property. There are no documents to show ownership and the time when the property was acquired. This claim must therefore fail.
14. The second issue relates on the applicants share to the matrimonial properties. As observed above the properties are registered in the joint names of the parties. Section 14 of the Marriage Act provides-
- Presumptions as to property acquired during marriage
- Where matrimonial property is acquired during marriage—
- (a) .....
  - (b) in the names of the spouses jointly, there shall be rebuttable presumption that their beneficial interests in the matrimonial property are equal.
15. The Respondent did not challenge the assertion that the applicant is entitled to 50 per cent of the properties. She on the other hand demonstrated that she made both financial and non financial contribution towards the acquisition of the properties. Accordingly I find that the parties intended that they hold the property in equal shares.
16. On the 3<sup>rd</sup> issue, I direct that all the matrimonial properties be sold and the proceeds be shared equally.
17. Each party to bear their own costs
- It is so ordered

**SIGNED, DATED AND. DELIVERED VIRTUALLY IN NAIROBI ON 15<sup>th</sup> DAY OF MAY, 2025.**

**M NYAUNDI**

**HIGH COURT JUDGE**

In the presence of:-

Fardosa Court Assistant

No appearance for parties

