



**EMW v RMK (Civil Suit E007 of 2022) [2025] KEHC 8684 (KLR) (16 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8684 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL SUIT E007 OF 2022**

**PM MULWA, J**

**JUNE 16, 2025**

**BETWEEN**

**EMW ..... APPLICANT**

**AND**

**RMK ..... RESPONDENT**

**JUDGMENT**

1. This judgment is in respect of the Originating Summons dated 9<sup>th</sup> February 2022 and filed by the Applicant.
2. The Chamber Summons was predicated on the grounds in the application and the Supporting Affidavit sworn by EMW sworn on 9<sup>th</sup> February 2022. She deponed that she was married to the Respondent under Kikuyu Customary Law in 1981 and have three children together, as per the availed birth certificates. That they initially lived in their matrimonial home on Land Parcel No. KIAMBAA/RUAKA/5XX8 until 2015 when the Respondent proposed selling their Ruaka home to invest in a new property. They sold the land to Cytonn Integrated Project LLP under a Joint Venture Agreement ("EMW3a & b"), with the deponent providing spousal consent ("EMW4"). In exchange, they were allocated 7 units (A603, D806, D905, D907, G503, C504) in the Alma Apartments project on Land Parcel No. KIAMBAA/RUAKA/6XX7 ("EMW5a & b"). That using the sale proceeds, the Respondent purchased several other properties, that is: KIAMBAA/THIMBIGUA/4XX3, 1XX9, 7XX9, KIAMBAA/RUAKA/4XX9 and KIAMBAA/KARURA/XXX ("EMW6a-d").
3. The Applicant further averred that they built a new matrimonial home on KIAMBAA/THIMBIGUA/7XX9 and moved in by 2019 ("EMW7"). That in July 2020, the Respondent approached her with plans to sell the Alma Units and other properties, which she opposed. That, the Respondent became violent, threatened her life, and in January 2021, he moved in with another woman. He also assaulted their daughter, who reported the incident to the police (OB No. 22/04/02/XXXX, Karuri Police Station) - ("EMW8"). That the Respondent has since advertised some Alma Units - (A603, G503, C504) for sale ("EMW9"). She further deponed that she has filed for divorce



in Kiambu Chief Magistrates Court. She seeks to restrain the Respondent from selling the Alma Units and other listed properties, as they are matrimonial assets acquired jointly. She argues that she contributed directly and indirectly to acquiring these properties and will suffer irreparable loss if they are sold.

4. The summons was opposed by the Respondent (RMK) vide replying affidavit he swore on 2<sup>nd</sup> July 2022. In the affidavit, he deponed that he admits Paragraphs 10 and 11 of the Applicant's affidavit and that he constructed the matrimonial home on land gifted to him by his father, that is KIAMBAA/RUAKA/5XX8. That the Applicant, despite being a businesswoman, contributed no money to its purchase or development. That in 2015, he decided to sell the inherited land to relocate his family to another property. He equally admits Paragraphs 14 to 18 of the Applicant's affidavit. That in 2020, his daughter studying in the United States of America faced tuition arrears of Kshs. 3 million risking the discontinuation of her studies. He proposed selling one asset to cover the fees, but the Applicant refused, leading to her leaving the home while accusing him of wanting to sell all properties. The claim that he intended to sell all properties (worth over Kshs. 160 million) for a Kshs. 3 million debt is false and that he is unaware of any violence or threats. That he has never cohabited with anyone in the matrimonial home or was violent toward their late daughter.
5. The Respondent contended that Cytonn Integral LLP erroneously listed his apartment (G503) for sale without his instruction. That the other properties listed by the Applicant were never intended for sale. Further, he has no plans to sell any properties, and the Applicant has provided no proof of such intent. That the Applicant took his title deeds when she left, raising concerns that she may misuse them, considering that she has a criminal record for obtaining a fraudulent US visa, thus increasing his apprehension. He reiterated that the Applicant never contributed to property acquisition. That the requirements for an injunction under Order 40 of the *Civil Procedure Rules* have not been met. He thus prays for the dismissal of the application.
6. The hearing of the suit proceeded *viva voce*.
7. The Applicant stated that the Respondent was her husband but are now divorced, the marriage having been dissolved in 2022. She stated that they got married in 1981, lived in a single room while the Respondent worked as a matatu conductor. The vehicle, owned by his father, later broke down, leaving her to support the family through dairy farming and selling maize. That by 1988, the respondent got a job at a tour company, while she expanded into commercial farming earning Kshs. 50,000/- monthly, and later she opened a shop in 1995 and a hotel in 2003.
8. She further testified that when the Respondent was unemployed, he became an alcoholic hence not supporting the family. She had to sell the hotel to fund their daughter's education in the US. Their son also studied abroad with her sister's help.
9. It was her testimony that the Respondent's father gave them 1.5 acres (LR 5XX8), where they built a maisonette. She stated that in 2015, the Respondent proposed that they sell their home to which they did to Cytonn for Kshs. 86 million, entering a Joint Venture for seven units. She then later discovered the properties were being sold without her consent, and presented documents (Exhibits 1–9), including the Joint Venture agreement and evidence of property sales.
10. In cross examination she admitted to abandoning her secretarial studies after getting pregnant and that the Respondent's matatu job ended in 1982, leaving her as the sole provider. She confirmed LR 5XX8 was a gift from the Respondent's father but couldn't recall when the title transferred to the Respondent. She stated that she had no documentation for her hotel or farming income, as she "did not anticipate disputes". She acknowledged the Cytonn agreement was solely in the Respondent's name and that she only signed a spousal consent (dated 3<sup>rd</sup> July 2015, not 2020 as mistakenly stated). She



- could not explain why her affidavit listed a Kahawa West property (Plot 2X6) which she denied owning. She admitted that the Respondent sent Kshs. 1 million to their daughter in the US but disputed his use of the remaining Kshs. 2 million from a loan.
11. During re-examination she clarified that they both developed LR 5XX8 together through farming and construction. That she signed the spousal consent as the Respondent's wife but was not involved in the Joint Venture terms. She further stated that she learned of Cytonn's property advertisements only after requesting documents from their office. It was her testimony that all acquired assets (e.g. Thindigua plots) derived from the sale of the original matrimonial land (LR 5XX8).
  12. The Respondent on his part testified that he initially lived on his father's property (Land No. 5XX8) after moving out of his mother's home on which he built a small house where the Applicant moved in with him around 1981/1982, and they lived in it for 1½ years. He testified that during the 1982 coup, he found Kshs. 26,000/- hidden in a bush, which he used to build a tin house where they lived until 1988. It was his testimony that he worked as a driver for a white employer and later a diplomat before becoming a tour guide in 1989. That his wife was unemployed and did not contribute financially. He stated that he used 'tips' from his job and bought building materials and constructed a better house in 1995. He further stated that in 2016, he partnered with Cytonn Developers receiving Kshs. 70 million plus property worth Kshs. 32 million in exchange for his land. He testified that with the proceeds, he bought several properties: Ruaka 4XX9, Thimbigua/Kiambaa/7XX9, Kiambaa/Ruaka/5XX8 and Kimbo Town XXX. He stated that the Applicant did not contribute to these purchases. That he borrowed Kshs. 3 million with Cytonn's consent to pay their daughter's school fees in the US and when he couldn't repay, Cytonn sold one of his seven apartments to settle the debt, leaving him with six apartments. From the sale he received a surplus of Kshs. 1 million. He also bought two buses for Kshs. 9.5 million (now sold) and he gave the Applicant Kshs. 500,000/- and he invested the rest. He stated that he is currently constructing on LR Ruaka 4XX9. That the Applicant disagreed with the sale but did not help repay the loan. It was his testimony that all properties were acquired solely through his efforts since the Applicant had no stable income during their marriage.
  13. According to the Respondent the land he inherited from his father, formed the basis of his investments.
  14. In cross examination the Respondent denies interfering with any properties, but admits taking a recent loan from Sidian Bank secured against Karura TXX. He claims he was unaware of any court order maintaining the status quo but Cytonn informed him of the court order. He received one property (LR 5XX8) from his father, which he later developed. That there is no documentation shown for the original land reference.
  15. In re-examination he stated that the Cytonn Agreement was Kshs. 85 million, but Kshs. 10 million was for land access and Kshs. 5 million for brokers thus leaving his net payment at Kshs. 70 million. That he received LR 1xx3 verbally as a gift. He was unaware of any restrictions. He reiterated that the Applicant had access to the Cytonn documents but made no financial contributions.
  16. The Applicant's submissions are dated 25<sup>th</sup> August 2023 and those by the Respondent are dated 6<sup>th</sup> November 2023 filed through their respective advocates. I have carefully analyzed and considered the submissions and the case law in support. The parties in their respective submissions reiterated the averments in their testimonies and affidavits and I do not wish to reproduce the same.
  17. The parties set out the same issues for determination, that is;
    - i. Whether the suit properties constitute matrimonial property.
    - ii. Whether the Applicant contributed towards the acquisition and the development of the matrimonial properties.



- iii. Whether the Applicant is entitled to an equal share or such higher proportion of the matrimonial properties.
18. For a property to qualify as a matrimonial property, it must meet the definition under Section 6 (1) of the [Matrimonial Property Act](#), 2013 which provides that:
- “For the purposes of this Act, matrimonial property means—
- i. the matrimonial home or homes;
  - ii. household goods and effects in the matrimonial home or homes; or
  - iii. any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.”
19. Under Section 2 of the [Act](#), ‘Matrimonial home’ has been defined as: “any property that is owned or leased by one or both spouses and occupied or utilized by the spouses as their family home, and includes any other attached property.”
20. Section 14 of the [Act](#) provides that:
- “Where matrimonial property is acquired during marriage-
- i. In the name of one spouse, there shall be a rebuttable presumption that the property is held in trust for the other spouse; and
  - ii. In the names of the spouses jointly, there shall be rebuttable presumption that their beneficial interests in the matrimonial property are equal.”
21. In [T.M.V. v F.M.C](#) (2018) eKLR, Nyakundi, J. stated as follows:
- “...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.”
22. It is on record that the properties herein were acquired during the subsistence of the marriage.
23. Noteworthy, this court sitting as a matrimonial property court cannot deal with other interests in land, to wit, inherited properties which are not matrimonial. This is because of the narrow jurisdiction over issues of land as ordained in Article 165(5) as read with Article 162(2)(b) of the [Constitution](#).
24. On contribution, the Court of Appeal had this in mind in [TKM v SMW](#) [2020] eKLR where it is stated as follows:
- “We bear in mind the edict in *Muthembwa v Muthembwa* (2002) 1 EA 186, and many other decisions reminding the courts that in assessing the contribution of spouses in acquisition of matrimonial property, each case must be dealt with on the basis of its peculiar facts and circumstances but bearing in mind the principle of fairness.”
25. 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.”

26. It is clear to this court that the *Matrimonial Property Act* of 2013, recognizes and formalizes both the monetary and non-monetary contribution as can be demonstrated from the circumstances of a given set of facts and evidence.

27. In *NWM v KNM* (2014) eKLR, it was stated that the Courts must give effect to both monetary and non-monetary contributions that both the Applicant and the Respondent made during the currency of the marriage to acquire the matrimonial property. Similarly, the House of Lords in *White v White* (200) UKHL 54 underscored the greater awareness of the value of non-financial contributions to the welfare of the family:

“...Self-evidently, fairness requires the court to take into account all the circumstances of the case. Indeed, the statute so provides. It is also self-evident that the circumstances in which the statutory powers have to be exercised vary widely ... But there is one principle of universal application which can be stated with confidence. In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles. Typically, a husband and wife share the activities of earning money, running their home and caring for their children. Traditionally, the husband earned the money, and the wife looked after the home and the children. This traditional division of labour is no longer the order of the day. Frequently both parents work. Sometimes it is the wife who is the money-earner, and the husband runs the home and cares for the children during the day. But whatever the division of labour chosen by the husband and wife, or forced upon them by circumstances, fairness requires that this should not prejudice or advantage either party when considering paragraph (f), relating to the parties' contribution.”

28. It is thus imperative upon this court to determine the issues in relation to the properties in this suit that were registered in the sole name of the Respondent; as far as the doctrines of contribution and presumption of trust are concerned.

29. In the case of *PWK v 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 proportions 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 v Gissing* [1970] 2All ER 780 Page 788.”



30. Upon my perusal of the pleadings and evidence filed by the parties herein, I note that the listed property is all registered in the name of the Respondent. It was upon the Applicant to prove her contribution whether monetary or non-monetary. As was held in *JOO v MBO* (*supra*):

- “ 10. Article 45(3) of the *Constitution* underscored the concept of equality as one that ensured that there was equality and fairness to both spouses. Equality and fairness were therefore one and intertwined. Equality also underscored the concept that all parties should have the same rights at the dissolution of a marriage based on their contribution, each party’s contribution to the acquisition of matrimonial property could not have been done on an equal basis as a party could have significantly contributed more in acquiring property financially as opposed to the other party.
11. Equity denoted that the other party, though having not contributed more resources to acquiring the property, could have nonetheless, in one way or another, through their actions or their deeds, provided an environment that enabled the other party to have more resources to acquiring the property. That was what amounted to indirect contribution. Equity therefore advocated for such a party who could seem disadvantaged for failing to have the means to prove direct financial contribution not to be stopped from getting a share of the matrimonial property.
12. The maxim ‘equality is equity’ had never been truer. Equity was an important principle when it came to matrimonial property since what was fair as it related to equity was not a question of the quantitative contribution by each party but rather the contribution by any party in any form, whether direct or indirect. Any substantial contribution by a party to a marriage that led to acquisition of matrimonial property, even though such contribution was indirect, but nevertheless had in one way or another, enabled the acquisition of such property amounted to significant contribution. Such direct or indirect acts could include:
  - a. Paying part of the purchase price of the matrimonial property
  - b. Contributing regularly to the monthly payments in the acquisition of such property.
  - c. Making a substantial financial contribution to the family expenses so as to enable the mortgage installments to be paid.
  - d. Contributing to the running of and welfare of the home and easing the burden of the spouse paying for the property.
  - e. Caring for children and the family at large as the other spouse worked to earn money to pay for the property.
13. While Article 45(3) of the *Constitution* dealt with equality of the fundamental rights of spouses during and after dissolution of marriage, equality did not mean the re-distribution of proprietary rights at the dissolution of a marriage. Neither did the reading of that provision lead to the assumption that spouses were automatically entitled to a 50% share by fact of being married.”



31. It was the Applicant's case that the listed properties were matrimonial properties and should be shared equally. The Respondent on the other hand maintained the position that this property was as a result of his sole effort and sought the exclusion of the Applicant.

32. Since contribution is an issue of fact, it calls for evidence. Sections 107(1), (2) and 109 of the Evidence Act deal with the burden of proof state as follows:

Section 107

(1) Whoever desires any Court to give judgment as to any legal right 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.

Section 109 - Proof of particular fact

The burden of proof as to any particular fact lies on the person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

33. Therefore, the burden of proof squarely lies on the Applicant. The Applicant has not adduced any evidence before the court to show that she paid for the said property. I therefore find that there was no financial contribution to purchase of any of the above properties.

34. However, guided by the above authorities and given the fact that the Applicant was married to the Respondent for 41 years, I am certain that despite the absence of evidence of actual financial contribution, she made some significant non-financial contribution towards the family's well-being in the form of upkeep and welfare. This undoubtedly gave the Respondent peace of mind and helped him to perform and make other achievements in life including acquiring the suit property. While it is difficult to quantify this non-monetary contribution, the same must be taken into account in determining the Applicant's entitlement to the property herein. To disregard this non-monetary contribution would fall afoul of the equality principle in Article 45(3) of the Constitution and result in an injustice.

35. Accordingly, I make the finding that the Applicant made indirect non-monetary contribution and is therefore entitled to a beneficial interest in the property. I will therefore assess the non-monetary contribution of the applicant to the suit properties at 35%. The Respondent will have 65% of the suit properties.

36. In the upshot, this Court orders and directs that:

- i. The Applicant did not make any financial contribution to the purchase of Kiambaa/Thimbigua/4XX3, Kiambaa/Thimbigua/7XX9, Kiambaa/Ruaka/4XX9, Kiambaa/Karura/T.13 and Kiambaa/Ruaka/6XX7. However, the Applicant is entitled to 35% share for non-financial contribution for each of the parcels.
- ii. Any property which has been shared to the two parties according to the proportions stated in this judgment, but which stands in the name of one spouse, is declared to be trust property, held by the person registered in trust for the other to the extent of the proportion of ownership determined in this judgment.



- iii. Similarly, if any property stands in the name of one or both of the parties it shall be conveyed or transferred to the person who has been determined in the proportion defined by the court in this judgment.
- iv. Any rental income from the said properties shall be settled in proportions of 65:35.
- v. Parties shall follow up the execution of these orders through the applicable institutional and legal instruments established for transfer or conveyance of land in Kenya.
- vi. In light of the nature of these proceedings, this court directs each party to bear its own costs

**JUDGMENT DELIVERED DATED AND SIGNED AT KIAMBU THIS 16<sup>TH</sup> DAY OF JUNE 2025.**

**PETER M. MULWA**

**JUDGE**

In the presence of:

Ms. Mualuko h/b for Mr. Keroko Ndegwa for Applicant

N/A for Respondent

Court Assistant: Julia

