



**IN v CM (Originating Summons E088 of 2023)
[2025] KEHC 10915 (KLR) (Family) (23 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 10915 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ORIGINATING SUMMONS E088 OF 2023
CJ KENDAGOR, J
JUNE 23, 2025**

BETWEEN

IN APPLICANT

AND

CM RESPONDENT

JUDGMENT

1. The parties herein contracted a marriage on 29th January, 2016. However, their marriage later broke down and the same was dissolved by a Court on 1st December, 2023. The Applicant sued the Respondent vide an Originating Summons dated 28th November, 2023 in which she sought the following orders;
 1. That a declaration do issue that all the under listed properties which are registered in the name of the Respondent and/or under his control are owned jointly by the Applicant and the Respondent and/or held beneficially and in trust for the Applicant;
 2. That an order is issued declaring that the Applicant is entitled to 50% of the said properties or as this Honourable Court may deem appropriate of the properties listed herein.
 3. That this honorable court be pleased to grant such further or other relief as may be just in the circumstances.
 4. That Respondent be ordered to pay the Costs of this suit.
2. The Application was based on a supporting affidavit sworn by the Applicant on 28th November, 2023 and other grounds adduced by the Applicant during the hearing of the matter. The Respondent filed a Replying affidavit sworn by him and dated 29th February 2024, in which he generally opposed the application. The Applicant filed a Further affidavit sworn by her and dated 19th July, 2024. The



Respondent filed a supplementary Affidavit sworn by him and dated 16th October, 2024. This court heard the cause viva voce on 12th March, 2025.

Applicant's Case

3. The Applicant claimed that they acquired the following properties during the subsistence of their marriage;
 - a. Land Parcel Number E. Bukusu/S.Kanduyi/15xxx.
 - b. Land Parcel Number E. Bukusu/E.Sangalo/3xxx.
 - c. Land Parcel Number E. Bukusu/S.Kanduyi/19xxx.
 - d. Land Parcel Number E. Bukusu/S.Kanduyi/18xxx.
 - e. Land Parcel Number E. Bukusu/W. Sangalo/7xxx.
 - f. Land Parcel Number E. Bukusu/E. Sangalo/3xxx.
 - g. Land Parcel Number 12715/10xxxMavoko.
 - h. Motor Vehicle Registration No xxx 002M Toyota Double Cab.
 - i. Motor Vehicle Registration No xxx 449R Toyota S. Wagon.
 - j. Motor Vehicle Registration No xxx 711J Toyota S. Wagon.
4. She claimed that she made direct contribution towards the acquisition, improvement, and or maintenance of the properties and that the properties are being held by the Respondent in trust for the family. She claimed that some of the properties are in the Respondent's name due to the mutual existing trust between them and the understanding that the parties had an equal share in the properties. She claimed that she got married to the Respondent in a come-we-stay arrangement in 2014, their firstborn child was born in June, 2015, and they formalized the marriage officially at the AG's office in 2016. She thus averred that she actively contributed to the acquisition of matrimonial properties both directly and indirectly from the year 2014 onwards.

The Respondent's Case

5. The Respondent opposed the Applicant's claim. He claimed that some of the properties listed by the Applicant are not matrimonial property because he had already acquired them by the time they contracted their marriage in 2016. Some of the properties he claimed to have acquired by then are; Land Parcels No E. Bukusu/S.Kanduyi/15xxx, No E. Bukusu/S.Kanduyi/18xxx, M/Vs Registration No xxx 711J, and No xxx 449R. He also claimed that he inherited Land Parcels No E. Bukusu/E.Sangalo/3xxx and No E. Bukusu/E. Sangalo/3xxx before his marriage to the Applicant.
6. He also claimed that M/V Registration No xxx 002M is not registered in his name, but rather in the name of one Lucy Lusike Nyongesa. Further, he claimed that he disposed off the Land Parcel No E. Bukusu/S.Kanduyi/19xxx in 2023 and that it is no longer registered in his name. Based on this, he argued that these 8 properties do not comprise matrimonial property and should thus be removed from the list.
7. He agreed that the 2 remaining properties Land Parcels No E. Bukusu/W. Sangalo/7xxx and No 12715/10xxxMavoko are registered in their joint names with the Applicant. He however, claimed that he raised the purchase price for these properties by himself without any monetary or non-monetary, direct or indirect contribution from the Applicant. He claimed that other than being registered as joint



owner, the Applicant did not make any contribution to the acquisition of the properties registered in their joint names. He stated that the Applicant was unemployed, and that all domestic chores and the children were cared by domestic workers whom he solely paid for their services.

Applicant's Submissions

8. The Applicant submitted that her Originating Summons is meritorious and should be allowed. She argued that she got married to the Respondent in a come-we-stay arrangement in 2014 and that she contributed directly and indirectly to the acquisition of the listed matrimonial properties from the year 2014 onwards. She argued that she took care of the Respondent's children and maintained their matrimonial home in Bungoma from 2014, and that she was managing and paying workers who worked at their matrimonial home. For these reasons, she urged the Court to consider her monetary and non-monetary contribution and find that any property acquired during the period of their marriage was as a result of her full support and efforts.

Respondent's Submissions

9. The Respondent submitted that the O.S lacks merit and should be dismissed. He made detailed submissions on each listed property giving reasons why the particular asset should be removed from the list or should not be divided between him and the Applicant. He argued that Land Parcel No E. Bukusu/S.Kanduyi/15xxx is not matrimonial property. He submitted that where property is registered in the name of one spouse, a person claiming beneficial interest must lead evidence of direct or indirect contribution. He argued that the Applicant is not entitled to the said parcel because she did not show evidence of direct and indirect contribution towards its acquisition.
10. Concerning Land Parcel Number E. Bukusu/E.Sangalo/3xxx, the Respondent argued that the said parcel should not be claimed as matrimonial property because he inherited the same from his father. For Land Parcel No E. Bukusu/S.Kanduyi/19xxx, the Respondent argued that the said property should be removed from the list because it is registered in the name of one Luke Nandasave Nabangala, who is not a party to this suit. He also argued that Land Parcel No E. Bukusu/S.Kanduyi/18xxx should not be included in the list because he acquired the same before their marriage and that the Applicant did not contribute to its acquisition during the alleged cohabitation before marriage.
11. Further, he argued that Land Parcel Number E. Bukusu/E. Sangalo/3xxx should also be removed from the list because he acquired it before the marriage and even before the alleged cohabitation. He also argued that M/V Registration No xxx 002M Toyota Double Cab is not a matrimonial property because it is registered in the names of third parties who are not parties to this suit. He also submitted that M/V Registration No xxx 711J should not be treated as a matrimonial property because he acquired it before the marriage.
12. Lastly, the Respondent agreed that Land Parcel Nos E. Bukusu/W. Sangalo/7xxx and No 12715/10xxxMavoko are registered in their joint names with the Applicant. He however argued that the Applicant is not entitled to 50% of the same for lack of direct financial contribution. He argued that he equally shared in catering for the house needs and caring for the children and that the Applicant cannot claim that she took sole responsibility for the same. He argued that in the premises, the indirect contribution made by the Applicant is no more than 10%. He thus submitted that the Applicant is only entitled to 10% of the 2 properties.

Issues for Determination

13. Having carefully analyzed the pleadings placed before me and submissions by the counsels for the respective parties, I find that the following are the issues for determination;



- a. Whether the parties herein were cohabitees before they contracted their marriage in 2016.
- b. Whether the Applicant has a claim to properties acquired by the Respondent before their marriage in 2016. (Parcel Nos E. Bukusu/S. Kanduyi/18xxx, No E. Bukusu/E. Sangalo/3xxx, M/V Registration No xxx 449R, and M/V Registration No xxx 711J).
- c. Whether the Applicant has a claim to property inherited by the Respondent during the Marriage (Parcel No E. Bukusu/E. Sangalo/3xxx).
- d. Whether the Applicant has a claim to property acquired by the Respondent during the Marriage (Parcel No E. Bukusu/S. Kanduyi/15xxx)
- e. Whether the Applicant has a claim to properties registered in the names of third parties (Parcel No E. Bukusu/S. Kanduyi/19xxx and M/V Registration No xxx 002M).
- f. How should this Court share Land Parcel Nos E. Bukusu/W. Sangalo/7xxx and No 12715/10xxxMavoko between the parties herein?

Evidence and Parties' Oral Testimonies

14. The parties testified before me on 12th March, 2025. Before I determine the issues identified above, I shall first summarize the parties' oral testimonies.
15. PW1 was the Applicant. She told the court that they married in a come-we-stay marriage in 2014 and formalized the union in 2016. She was schooling and working and they were residing in Nairobi. The Respondent got a job in Bungoma and so she had to leave work and accompany him to Bungoma.
16. She was using M/V KCB 449R to run family errands and that she has possession of the said car. She was supporting the Respondent financially. Before she left work she was doing business, she was in chamas and would do as event organizers. She contributed to the purchase of the said properties and provided cash deposit slips and Mpesa transactions.
17. She paid Kshs.295,000/= as part payment for the Bungoma home. The matrimonial home operations were managed by both of them. She was doing most of it, taking care of the children and the home. She was the one paying the workers. She prayed to be granted the Bungoma home so that her children can have a place to call home. She wished to get the ½ acre Bungoma parcel. Also because of her movement, she wished to retain the car already in my possession.
18. On cross-examination, she stated that when she met the Respondent she was in her 3rd year at the university and she was working as an administrator with a monthly salary of Kshs.30,000/=. She admitted that she did not adduce evidence of the employment and the salary. She stated that she went into business after getting capital from her brother. She also admitted that she did not annex document for that. She also stated that she had not graduated at the time of their marriage, but the Respondent was employed as a county Executive at Bungoma County and was an engineer. He was doing better than her financially.
19. She testified that their matrimonial home is not on Land Parcel No E. Bukusu/S.Kanduyi/19xxx. They do not reside on the same. She stated that the Respondent sold the property to Luke and that Luke was not a party to this case. She also told the court that the matrimonial home was not Land Parcel No E. Bukusu/E. Sangalo/3xxx. The Mavoko property was acquired a few months after they got the marriage certificate. She admitted that the funds paid to Garred in the purchase of E.Bukusu/West Sangalo/5983 were from the Respondent.



20. R1 was the Respondent. He stated that they were legally married on 29th January, 2016. Throughout the marriage he was the one taking care of the financial obligations. Concerning the properties jointly owned and registered, he stated that the Applicant did not offer financial contribution but rather she contributed in kind. He had no plan of getting the M/V from her. A transfer of the M/V can be to her. Bungoma home is jointly registered. I developed the home about 6 million. I urge the court to look at the value wholly. The Land Parcel No E. Bukusu/S.Kanduyi/15xxx belongs to Gabriel. The document I have produced does not show that I sold, but it is an old green card.

Whether the parties herein were cohabitees before they contracted their marriage in 2016

21. The Applicant claimed that she entered into a come-we-stay arrangement with the Respondent in 2014. She argued that they cohabited until 2016 when they formalized their marriage at the AG's Office. She argued that she has a claim and beneficial interest to properties acquired by the Respondent during the said cohabitation. On the other hand, the Respondent denied the fact of cohabitation with the Applicant. He insisted that they did not cohabit and that their dealings started in 2016 after their marriage at the AG's office. This court is being invited to determine whether the parties herein were cohabitees before they contracted their marriage in 2016.

22. Section 2 of the Marriage Act No. 4 of 2014 defines the word 'cohabit' as follows;

“to live in an arrangement in which an unmarried couple lives together in a long-term relationship that resembles a marriage.”

23. The Court in *K O & another v J O* [2018] eKLR, defined cohabitation in the following terms;

35. Cohabitation therefore entails the long-term continuous living together of a couple holding themselves out as a husband and wife but in the absence of any formal marriage.

36. On the nature and length of the cohabitation, there is no doubt that the period of cohabitation should be long enough, continuous and not a sojourn, a habit of visiting or waiting for a time.

24. The burden of proof is on the Applicant to prove that she cohabited with the Respondent before their wedding at the AG's office. This obligation is set out in Section 107-109 of the Evidence Act provides as follows: -

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.

25. Courts have previously pronounced on what a party ought to prove to establish the fact of cohabitation. The Court in *PKE v SNM* (Civil Appeal E003 of 2021) [2023] KEHC 17683 (KLR), made the following observations;

33.....The second ingredient is General Repute. The appellant and the respondent are residents of Chogoria and having lived there long enough, the appellant ought to have called evidence to prove that the community regarded him and the respondent as husband and wife. In any case, the appellant never called his parents or siblings to adduce evidence that



they considered the two as husband and wife. The burden was on the appellant to prove the presumption of marriage.

26. The Applicant did not adduce any evidence to show this court that she cohabited with Respondent in the period between 2014 and the date of their marriage at the AG's office on 29th January, 2016. Given that the Respondent denied the same, it was her words against the Respondent's. It was upon her to call witnesses or adduce any other form of evidence to prove the fact of cohabitation. She did not. I therefore find and hold that cohabitation was not proved in this case. I find that the parties herein were not cohabiting in the period between 2014 and 29th January, 2016.

Whether the Applicant has a claim to properties acquired by the Respondent before their marriage in 2016. (Land Parcels No E. Bukusu/S.Kanduyi/18xxx and No E. Bukusu/E. Sangalo/3xxx, and M/Vs Registration No xxx 449R and No xxx 711J).

27. The Respondent claimed that he acquired the said 4 properties before their marriage in 2016. I have relooked at the available documentary evidence to ascertain when the Respondent acquired the 4 properties.
28. Concerning Land Parcel No E. Bukusu/S.Kanduyi/18xxx, the Respondent produced a sale agreement which indicated that he purchased the parcel on 9th September, 2015. I have seen the said sale agreement. Based on this evidence, I find that E. Bukusu/S.Kanduyi/18xxx was acquired before the marriage.
29. Concerning Land Parcel No E. Bukusu/E. Sangalo/3xxx, the Respondent produced a green card for this property which indicated that he acquired it on 13th May, 2014. I have seen the said green card. Based on this evidence, I find that the Respondent acquired Bukusu/E. Sangalo/3xxx before the marriage.
30. With regards to M/V Registration No xxx 449R, the Respondent produced a motor vehicle copy of records indicating that the said M/V was registered in his name on 1st July, 2015. I have seen the said document. It shows that the date of Registration was 1st July, 2015. I thus find that the Respondent acquired the said M/V before the marriage.
31. Lastly, with regards to M/V Registration No xxx 711J, the Respondent produced a motor vehicle copy of records indicating that the said M/V was registered jointly in his name and the National Bank on 15th October, 2012. I have seen the said document. It states that the date of registration was 15th October, 2012. I thus find that the said M/V was acquired before the marriage.
32. Therefore, I have ascertained that the Respondent acquired the 4 properties listed above before the marriage. The law on division of property acquired before marriage is Section 9 of the Matrimonial Properties Act, which provides as follows;
9. Acquisition of interest in property by contribution
- Where one spouse acquires property before or during the marriage and the property acquired during the marriage does not become matrimonial property, but the other spouse makes a contribution towards the improvement of the property, the spouse who makes a contribution acquires a beneficial interest in the property equal to the contribution made.
33. I find that the 2 land parcels properties in question do not constitute matrimonial property. However, based on section 9 of the Matrimonial Properties Act, the Applicant can still claim a share in the said properties by showing that she made contributions towards the improvement of the said properties.



Was there any improvements in the first place? I have relooked at all the evidence on this issue to ascertain whether the identified properties had been developed from their initial or original form.

34. In the circumstances of this case, no improvements were made on the 4 properties. In my analysis, there was no evidence that the said properties had undergone any improvement since they were acquired by the Respondent. Accordingly, I find that the 4 properties herein are not available for distribution as they belong to the Respondent absolutely. The Applicant's claim to these 4 properties thereby fails.
35. However, during the hearing, the Respondent told this court that he has no plans of getting the M/V Registration No xxx 449R from the Applicant. He told this court that a transfer of the said M/V can be done to the Applicant. In my view, these statements by the Respondent mean that he has no issue with the Applicant retaining the said M/V. For these reasons, I find that the Applicant will, notwithstanding my initial analysis outlined above, take the said M/V absolutely, and a transfer of this particular M/V shall be done in her favour.

Whether the Applicant has a claim to Property Inherited by the Respondent during the Marriage (Land Parcel No E. Bukusu/E.Sangalo/3xxx)

36. The Respondent submitted that the said parcel should be removed from the list because he inherited the same from his father during the subsistence of their marriage. I have seen proprietorship section of the parcels's ownership document. It shows that the Respondent acquired the same from one Mukhongo Collins, who is his father. It was transferred to the Respondent in 2017, which was during the subsistence of the marriage. The question is whether the Applicant is entitled to a share of the said property.
37. The law on this area is Section 9 of the Matrimonial Properties Act, which provides as follows;
 9. Acquisition of interest in property by contribution
Where one spouse acquires property before or during the marriage and the property acquired during the marriage does not become matrimonial property, but the other spouse makes a contribution towards the improvement of the property, the spouse who makes a contribution acquires a beneficial interest in the property equal to the contribution made.
38. The parcel in question is registered in the name of the Respondent. In addition, the parcel did not become a matrimonial property because the parties did not establish their matrimonial home on the said parcel. Therefore, according to Section 9, the Applicant will only claim a share of the said parcel if she can prove that she made a contribution towards the improvement of the property.
39. The court in NGV v CNV also known as CHM (Matrimonial Cause 6 of 2021) [2022] KEHC 16645 (KLR) (6 December 2022) (Judgment) interpreted the law on division of properties inherited by one spouse in the following terms;
 53. Regarding matrimonial property in LR No Mombasa/block/XXI/190, both parties are in agreement that the ¼ share was inherited from the estate of the applicant's father in succession case number 158 of 2008. Section 5 of the *Matrimonial Property Act* provides that the interest of any immovable property acquired or inherited before marriage shall not form part of the matrimonial property. Although the transmission process took place during the subsistence of marriage, the respondent does not have an automatic right over the inherited property unless proved that she contributed towards any improvement on the property.
 54. It would be an affair if a spouse were to be married at the time when a co-spouse is getting his or her inheritance and immediately after acquiring the inheritance they divorce hence claims



a share. Inherited property is meant for generational posterity and not for diversion to people outside that generation. In the absence of any contribution towards improvement of that property, the respondent has no right to claim a share.

55. In the circumstances of this case, no improvements were made on the inherited property. Accordingly, the matrimonial home herein is not available for distribution as it belongs to the applicant absolutely.
40. Similarly, the Court of Appeal in M vs M civil appeal No 74 /2002(2008)1KAR 247 held as follows;
- 'Property inherited and gifted to one spouse before the marriage, and where property exists in the same condition as it was inherited or gifted, no problem arise. The spouse to whom it was gifted should be allowed to retain it. Problems however arise where improvements are made using matrimonial resources and then the property ceases to be in its original form and increases in value'
41. In my view, the Applicant would only claim any interest in the said inherited parcel if she could prove that the parcel has since been developed or improved, and that she contributed to the said improvements. Was there any improvements in the first place? I have relooked at all the evidence on this issue to ascertain whether the parcel had been developed from its initial or original form. In my analysis, there was no evidence that the said parcel had undergone any improvement since it was acquired by the Respondent. For that reason, I find that the Applicant does not have beneficial interest on the same because it has not undergone any improvements since it was gifted to the Respondent in 2017.

Whether the Applicant has a claim to a property acquired by the Respondent during the Marriage (Land Parcel No E. Bukusu/S.Kanduyi/15xxx)

42. The Respondent argued that this property should be removed from the list on grounds that he has already sold it to a third party - one Gabriel Wamalwa - back in 2023. However, he did not adduce any evidence to show that he had sold as he alleged. He produced a green card to the said parcel I have looked at the same. The green card shows that the parcel is in the name of the Respondent. It does not show that the said property has been sold to a third party. He also did not produce a sale agreement with the third party to prove the alleged sale. For these reasons, I find that his claims that he has disposed off the said parcel are unproven and unsubstantiated.
43. The Respondent also claimed that the said parcel should be removed from the list on grounds that he acquired the same before they contracted their marriage. He averred that he acquired it in 2014, he paid the purchase overtime, and the title was issued to him in 2017. He thus argued that the Applicant is not entitled to a share of the said parcel on grounds that she did not make any monetary or non-monetary, direct or indirect contribution to the acquisition of the said parcel.
44. I have looked at the evidence on this issue with a view to determining whether it can be said that the Respondent acquired the said parcel before the marriage. The Respondent did not provide evidence to show that he acquired it in 2014. The green card shows that the immediate previous owner was one Dominic Wafula and that he transferred the parcel to the Respondent in 2017. It was upon the Respondent to adduce evidence and show that, even though he acquired the title deed in 2017, he had begun the process of purchasing the said property way back in 2014 as he alleged.
45. However, he did not adduce any evidence to support his claims. He did not produce a sale agreement between him and Dominic Wafula which would have shown the exact date when the purchase process began. In addition, he says that he paid for the parcel overtime until he finally acquired it in 2017. To this end, the Respondent did not attach evidence of payment of the purchase price to Dominic Wafula



to prove that the purchase was underway by the time they contracted their marriage in 2016. For these reasons, I find that the Respondent's claim that he acquired the parcel before they contracted their marriage is unproven and unsubstantiated.

46. Based on the above analysis, I find that the Respondent acquired the said parcel in March 2017 as shown in the green card. Therefore, I find that the same was acquired during the subsistence of their marriage.

47. The next question is whether the Applicant can claim beneficial interests in the said parcel. The law on division of property acquired by one spouse during the marriage is Section 9 of the Matrimonial Properties Act, which provides as follows;

9. Acquisition of interest in property by contribution

Where one spouse acquires property before or during the marriage and the property acquired during the marriage does not become matrimonial property, but the other spouse makes a contribution towards the improvement of the property, the spouse who makes a contribution acquires a beneficial interest in the property equal to the contribution made.

48. In my view, the Applicant would only claim any interest in the said parcel if she could prove that the parcel has since been developed or improved, and that she contributed to the said improvements. Was there any improvements in the first place? I have relooked at all the evidence on this issue to ascertain whether the parcel had been developed from its initial or original form. In my analysis, there was no evidence that the said parcel had undergone any improvement since it was acquired by the Respondent. For that reason, I find that the Applicant does not have beneficial interest on the same because it has not undergone any improvements since it was acquired by the Respondent in 2017.

Whether the Applicant has a claim to properties registered in the names of third parties (Land Parcel No E. Bukusu/S.Kanduyi/19xxx and M/V Registration No xxx 002M).

49. The Respondent submitted that the 2 properties named above ought to be removed from the list because they are registered in the names of third parties who are not parties to this suit. I have relooked at the available evidence to ascertain the ownership status of the 2 properties.

50. Concerning Land Parcel No E. Bukusu/S.Kanduyi/19xxx, the Respondent claimed that the same is registered in the name of one Luke N. Nabangala. I have seen the Proprietorship Section of the said parcel. It shows that it was transferred from the Respondent to one Luke Nabangala on 23rd February, 2023 and that a new title deed was issued to Luke on 27th February, 2023.

51. With regards to M/V Registration No xxx 002M, the Respondent claimed that the same is registered in the names of Lucy L. Nyongesa and Momentum Credit. He produced a motor vehicle copy of records dated 8th February, 2024. I have seen the same. It indicates that the current owner of the said M/V is one Lucy L. Nyongesa and that it has been charged with Momentum Credit Limited. The Applicant argued that this is a falsified document, but she did not provide evidence or substantiate the forgery claims to the standard required by law.

52. Based on these pieces of documentary evidence, I find that the two properties are in the names of third parties who are not parties to this suit. On whether such properties are up for division, I find company in the case of *LWG v GGW* [2025] KEHC 3188 (KLR), where the Court encountered a similar question and held as follows;

Regarding the other vehicle Registration No. KBL 2630, the same was sold and is now registered to a third party. A copy of the logbook (Annexure 'LWG 9 (a)') indicates that



said vehicle is now registered to Eco Bank Ltd and one Paul Mwangi Thiong'o. The Plaintiff ought to have complained about the sale/transfer of this vehicle sooner. As such said vehicle no longer exists as an asset belonging to either party. The current owner of said vehicle is not a party to this matrimonial cause. As such I find that the vehicle KBL 2630 does not constitute matrimonial property.

53. I associate myself with the above authority. I thus find that the two properties are not available for division in this instant cause because they do not belong to any of the parties herein. And what is more is that the current owners of the said properties are not parties to this matrimonial cause. The upshot is that the Applicant's claim to the 2 properties fails.

How should this Court share Land Parcels No E. Bukusu/W. Sangalo/7xxx and No 12715/10xxxMavoko between the parties herein?

54. The first issue for determination is whether the two properties are matrimonial properties within the meaning of the Act. Section 6 of the Matrimonial Properties Act defines Matrimonial Property in the following terms;

6. Meaning of matrimonial property

(1) For the purposes of this Act, matrimonial property means—

- (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.

55. From the evidence adduced by the parties, it is clear that the parties established their matrimonial home on Land Parcel No E. Bukusu/W. Sangalo/7xxx. This was confirmed by both the parties in their testimonies before this Court. They also confirmed that the same is jointly registered in their names. It was also evident that Land Parcel No 12715/10xxxMavoko is jointly registered in the names of the parties herein and that it was acquired during the subsistence of their marriage. Based on these facts, this court has no difficulties in finding that the two properties constitute matrimonial properties within the meaning of the Matrimonial Properties Act.

56. The next question is to determine the beneficial interest of each party to the above matrimonial properties. Section 14 of the Matrimonial Properties Act allows the Court to make a presumption that joint property that is acquired during coverture, is held by spouses equally. The Section provides as follows;

14. Presumptions as to property acquired during marriage

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.

57. The Court of Appeal in *O K N v M P N* [2017] eKLR had this to say regarding the said presumption;

Where a property is registered, in the joint names of the parties, there is normally a presumption that each party made equal contribution towards its acquisition (See *Kivuitu*



-v- Kivuitu, [1991] KLR 248. The presumption is however, rebuttable by either party showing that their contributions were not equal.

Land Parcel No E. Bukusu/W. Sangalo/7xxx

58. I shall interrogate each property at a time, starting with Land Parcel No E. Bukusu/W. Sangalo/7xxx, which forms the matrimonial home. According to the Originating Summons dated 28th November, 2023, the Applicant asked for 50% of the said property. However, on the other hand, the Respondent submitted that the Applicant is only entitled to 10% of the said property.
59. Having established that the said property is registered jointly, the presumption in Section 14 of the Matrimonial Properties Act sets in. As such, there is a rebuttable presumption that the beneficial interests of the parties in this property are equal. However, a party claiming a higher portion than 50% bears the burden of adducing evidence to rebut the said presumption. In this particular instance, the Respondent claimed 90% of the property. It was thus, in my view, his duty to adduce sufficient evidence to rebut the prevailing presumption and establish that he truly deserves the 90% or any other percentage higher than the 50%.
60. From the evidence on record, the Respondent bought two parcels from one Garred Nyongesa in two separate transactions. The two parcels were merged and curved out of E.BUKUSU/W.SANG'ALO/5983, giving rise to Land Parcel No E. Bukusu/W. Sangalo/7xxx. In the first sale agreement dated 11th March 2019, he bought a parcel measuring 16.5 x 100 from the seller for Kshs.150,000/=. He paid the said purchase price and the seller acknowledged the same. In the second sale agreement dated 19th August, 2019, the Respondent bought a parcel measuring 0.03 ha from the same seller. The purchase price was Kshs.300,000/=.
61. He also produced documentary evidence to demonstrate that that he paid the purchase price for the second parcel in the following manner; Kshs.60,000/= on 19th August, 2019; Kshs.40,000/= on 22nd October, 2019; and Kshs.100,000/= on 3rd December, 2019. I have looked at the evidence to ascertain the Applicant's take on the issue of who paid the purchase price for this particular parcel. In my analysis, the Applicant does not, in all her affidavits and evidence, claim to have paid a part of the purchase price. Her claim was that she played a pivotal role in identifying the said property.
62. I note that the cumulative purchase price for the said parcel was Kshs.450,000/=. Based on these facts placed before me, I am inclined to find that the purchase price for the parcel was paid by the Respondent.
63. The parties told this Court that the property has since been developed. The Respondent told the court that he developed the home by himself and it cost him about Kshs.6 million. He produced a copy of an agreement between him and a Developer dated 1st November, 2019, in which the Developer agreed to develop the said parcel at the cost of Kshs.6,322,645/=. There was however no documentary evidence to show that the Respondent paid the stated amount to the developer.
64. On the other hand, the Applicant told the Court that she handled the finances and the transactions with the workers who were helping in the construction of the home on this parcel. She claimed that she conducted business and managed the financial aspects of the home. She also stated that the Respondent used to request financial support from her, both directly and indirectly. She produced a filtered M-pesa statement indicating that she had, since May, 2017 to December, 2022 transferred Kshs.638,000/= from her M-pesa line to the Respondent's. I have seen the said M-pesa statement. The Respondent did not deny that the said funds were sent to him; his response was that the monies were sent when all the properties had already been acquired.



65. The Applicant also stated that she deposited funds into their joint account and she produced a bank statement running from January, 2016 to March, 2024. The statement shows that the Applicant made the following deposits; Kshs.500,000/= on 16th July, 2020; Kshs.450,000/=28th July, 2020; Kshs.500,000/=on 30th June, 2021; and Kshs. 500,000/= on 2nd July, 2021. The Respondent did not deny that the Applicant made the said deposits to the said account; his response is that the Applicant did not show any nexus between the account holder in the statement and the purchase/development of the suit properties.
66. The law on division of matrimonial property is Section 7 of the Matrimonial Properties Act, which provides as follows;
7. Ownership of matrimonial property
- 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.
67. In the instant case, this Court is being invited to determine the contribution of each of the respective parties. Even though I have already held that the Respondent paid for the purchase price, it is clear to this Court that the property has since been developed into a matrimonial home on which the parties resided during their happy days in marriage. The question that begs now is the contribution of each party to the said developments.
68. The parties herein have not shown this Court the nature and extent of the development. They have also not shown when the development started and when it was finalized. Lastly, the Respondent did not establish whether and when they cleared paying the developer, who had been hired to carry on the constructions. In my view, the timelines would have helped this Court to determine whether any particular payment made by any of the parties can be said to have been made within the time when the development was underway.
69. What then was the Applicant's contribution to the acquisition and development of the parcel? The Applicant admitted that she was a university student when they met, while the Respondent was employed as a county executive at Bungoma County and an engineer. She also admitted that the Respondent was doing better than her financially when they met.
70. Although the Applicant claimed that at the time they married she was then employed as an administrator on a monthly salary of Kshs.30,000/=, she did not adduce any evidence of employment. Lastly, she did not dispute the fact that the Respondent entered into a contractual agreement with the developer for the purposes of doing the construction, and she did not claim to have paid a part of the fees paid to the said developer. In addition, she claimed that her brother gave her some capital with which she ventured into business. She however did not provide evidence of the said financing and business.
71. In addition, the Applicant stated that she paid Kshs.295,000/= to Boniface Wakhungu on 25th May, 2021. She claimed that this was part payment of this parcel, which claim was disputed by the Respondent. However, she did not explain to this court who was Boniface Wakhungu and his nexus to the parcel in dispute. Thus, this court could not ascertain the purpose for which the Applicant paid the said amount to Boniface Wakhungu and whether this went into the acquisition or development of the parcel in dispute.



72. Nonetheless, there is no doubt that she also took care of the home, managed the workers, and took care of the kids. In addition, there was evidence that she paid one Peter Waliela Kshs.61,000/=to carry out the interiors of the house.
73. In totality of this evidence and the peculiar circumstances of the case, I find that Applicant's contribution towards the acquisition and development of this particular asset can be assessed at 35% while that of the Respondent be assessed at 65%.

Land Parcel No 12715/10xxxMavoko

74. The Respondent claimed that he acquired this property by himself and that the Applicant did not provide monetary and non-monetary contribution towards its acquisition. He claimed that he paid the purchase price without any contribution from the Applicant. He claimed that he cleared the balance of the purchase price on 5th September, 2016 and produced a bank statement to prove the same. I have seen the said bank statement. It shows that he paid Kshs.1,400,000/= to the firm of Nzavi and Co Advocates on 5th September, 2016.
75. The Applicant does not deny the fact that the Respondent paid the said monies for that the purpose of purchasing this parcel. She also did not, in all her pleadings, claim to have paid a part of the purchase price for this particular property. This Court notes that the property was acquired and transferred to the parties on 18th November, 2016. This was barely 2 months after the Respondent paid Kshs.1,400,000/= to the law firm. Based on these facts, I find that the purchase price for this particular parcel was paid by the Respondent.
76. I also note that the parties have not developed this particular parcel. This is more so given that none of the parties claimed that the said parcel has ever been developed since when they acquired it.
77. Even though the Applicant did not pay a part of the purchase price, I appreciate that she gave non-financial contribution in the form of taking care of their child who had been born by then, companionship to the Respondent, and through other non-financial support which created a good environment for him to purchase the said parcel. For these reasons, I assess her contribution to the purchase of this parcel at 15%, while that of the Respondent at 85%.

Disposition

78. These are the final orders of the Court;
- a. The Applicant and the Respondent are entitled to Land Parcel No E. Bukusu/W. Sangalo/7xxx in the ratio of 35%:65% in favor of the Respondent.
 - b. The Applicant and the Respondent are entitled to Land Parcel No 12715/10xxxMavoko in the ratio of 15%:85% in favour of the Respondent.
 - c. The Parties are at liberty to hold the proprietary interest in the property as per the ratios identified above. If they opt to divide, the properties identified in (a) and (b) above shall be valued within 60 days of the date hereof by a valuer jointly appointed by the parties. In the event that the parties are unable to agree, the valuation will be done by a government valuer.
 - d. The Applicant and the Respondent shall be at liberty to buy each other out, in respect of any of the properties I have identified in (a) and (b) above within 60 days of the date the valuation report is published.



- e. If parties are unable or unwilling to buy each other within 60 days from the time the valuation report is prepared and published by the valuer, I direct that the properties, or whichever of them remains unsold, be sold by public auction. The proceeds therefrom shall be divided in the ratios I have identified.
- f. The Applicant's claim for M/V Registration No xxx 449R Toyota S. Wagon succeeds. The said M/V shall be transferred to her name.
- g. The Applicant's claim for Land Parcels No. E. Bukusu/S.Kanduyi/18xxx, E. Bukusu/E.Sangalo/3xxx, E.Bukusu/E.Sangalo/3xxx, E. Bukusu/S.Kanduyi/15xxx, and E. Bukusu/S.Kanduyi/19xxx fails.
- h. The Applicant's claim for M/V Registration No xxx 711J Toyota S. Wagon and M/V Registration No xxx 002M Toyota Double Cab fails.
- i. This is a family matter and the circumstances of the case do not call for an award of costs.

79. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 23RD DAY OF JUNE, 2025.

.....

C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

Ms. Nekesa Advocate holding brief Omari Advocate for the Applicant

Mr. Kiplangat Advocate for the Respondent

HC. MAT. PROPERTY O.S. E088 OF 2023 JUDGMENT	0
---	---

