



**VKM v PKM (Matrimonial Cause E095 of 2023)  
[2025] KEHC 8654 (KLR) (Family) (3 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8654 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
MATRIMONIAL CAUSE E095 OF 2023  
CJ KENDAGOR, J  
JUNE 3, 2025**

**BETWEEN**

**VKM ..... PLAINTIFF**

**AND**

**PKM ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff and the Defendant got married on 4<sup>th</sup> May, 1991. Their marriage was however dissolved on 9<sup>th</sup> November, 2016. During their marriage, the couple acquired Land Reference Number 2XX/19XXX (Original Number 2XX/12XXX) and Parcel No. XXX, Plot No. XXX Kitengela. The two properties were registered jointly in their names. Upon dissolution of their marriage, a dispute arose as to the division/sharing of the said two properties. The Plaintiff brought an Originating Summons in which she claimed that the two properties should be registered in her name as the sole proprietor. She supported her claims with an affidavit dated 18<sup>th</sup> December, 2023 and a supplementary affidavit dated 7<sup>th</sup> March, 2024.
2. The Defendant filed a replying affidavit dated 23<sup>rd</sup> January, 2024 in which he denied the Plaintiff's claims. Instead, he claimed that this honourable Court should distribute the two properties in a proportional ratio of 70:30 in his favor. The matter went for hearing and both parties testified. Thereafter, the parties were directed to file their submissions.

**The Plaintiff's Case**

3. The Plaintiff claimed that the Defendant was neither involved in the acquisition nor the payment for the two properties. She claimed that she purchased the properties by herself in the exclusion of the Defendant. She claimed that the Defendant left the entire burden of raising the family to her and that he did not contribute in kind or in any manner towards the acquisition of the said matrimonial



property. She stated that she took a bank loan to purchase the properties and that she has continued to pay for the loan exclusively. She claimed that although the Defendant was employed from 1998 to 2008, he did not buy or contribute anything in the house as used his entire salary on himself.

### **The Defendant's Case**

4. The Defendant claimed that the mortgage for the property built on Land Reference Number 2XX/19XXX was a joint commitment, with both of them as co-borrowers. He also claimed that, while the Plaintiff claims to have contributed to the mortgage payments, these payments were sourced from the profits of their jointly operated businesses. He claimed that he played a pivotal role in the inception, management, and development of Beautiful Heart Nursery School, identified as matrimonial property, and whose proceeds went to the purchase of the properties. He stated that they opened and ran several joint bank accounts for their use as a family and that prior to their acquisition of a residential property, he solely bore the financial responsibility for their rental accommodations. In the replying affidavit, he introduced another property referenced as Mitubiri/Wempa/XXXX/314, which he claimed the Plaintiff had omitted. However, he did not provide any proof of its existence, nor did he refer to it at the hearing.

### **Plaintiff's Written Submissions**

5. The Plaintiff submitted that the Defendant is not entitled to a share of the two properties and that the same should be registered in her name. She argued that she contributed 100% towards the acquisition of the said properties. She argued that the Defendant did not tender evidence to show his direct or indirect contribution towards the acquisition of the matrimonial properties. She argued that the Defendant made no efforts whatsoever, apart from having his name included both in the title documents and bank accounts. She submitted that the Defendant had no clue of how much had been repaid for the loan and what the outstanding balance was.
6. She submitted that although the matrimonial property is registered in their names, the mere registration does not automatically imply that both parties own the same in equal shares. She argued that the presumption of equal ownership is rebuttable and that she had adduced sufficient evidence to rebut the presumption. She submitted that the Court should not infer any contribution on the part of the Defendant because he did not allege to have made any non-monetary contribution towards the acquisition of the property. She argued that she paid the 50% initial deposit, took out a loan for the balance of the purchase price and that she continues to repay the mortgage over the property to date.

### **The Defendant's Written Submissions**

7. The Defendant submitted that he is entitled to 70% of the property. He argued that he made both monetary and non-monetary contribution towards the acquisition of the said properties. He argued that he has proved a consistent pattern of financial contribution to joint accounts held by both parties. He also argued that they had established a business jointly, and that the business enabled the Plaintiff to acquire the facility to purchase the Land Reference Number 2XX/19XXXX. He argued that the joint business was a family business within the meaning of the *Matrimonial Property Act*, because it was registered as a business with both parties listed as registered proprietors. He argued that the Plaintiff could not have acquired the said properties solely because she admitted in her testimony that she was not earning sufficient income independently.



## Issues for Determination

8. Having looked at the pleadings, the several affidavits, the parties' oral testimonies, and their respective submissions, this Court is being called upon to ascertain and determine each party's respective contribution towards the acquisition of the two properties.

## Evidence

9. The parties appeared and testified before this Court. Their testimony is as follows;
10. PW1 was the Plaintiff. She said she is a teacher and runs a kindergarten school. She stated that the dispute is about two properties, the house in Phenom and a land at Kitengela. She stated that the two properties should be put in her name because she bought them with her money and was still paying for some with no one's help. She stated that she put the Defendant's name in the documents because they were married and it was out of love. She told the Court that the Defendant did not contribute, and that she was still paying the mortgage. She produced bank statements showing payment of the loan. She also produced copies of school fees payments receipts for the children. She also produced copies of fixed deposit bank accounts.
11. On cross-examination, she stated that the Defendant was employed by World Vision from 1998 to 2008. She also admitted that the two had joint accounts in City Bank and the Co-operative Bank. She also stated that the Africa Highlands Packers was a joint business as per the documentation. She also stated that she took her pension which accounted for 50% and borrowed some funds from a Sacco to purchase the properties. She however, admitted that she had not provided any evidence to prove the loan from the Sacco. She also admitted that according to the business profile of the Nursery School, the Defendant is a director and that they are the joint owners of the school. She also admitted that subsequently payments for the loan were made from the school and that she did not have documents to show she runs the school by herself.
12. On re-examination, she stated that the Defendant was not giving her any money for the time he was working with World Vision. She also stated that the African Packers was opened by the Defendant and the she did not want to be a partner. She maintained that she had never operated the said company. She also stated that the school used to be a joint venture but it is no longer a joint venture. She also stated that the bank deposits slips provided by the Defendant went to settle bills for the house and rent in 2007 early and 2006. She stated that the house was acquired in 2012. Lastly, she stated that the Defendant has never helped her run the school in any way and that even the staff did not know him.
13. DW1 was the Defendant. He stated that he is a professional I.T person. He told the Court that he was the one who set up the Nursery school. He stated that he had evidence that he invested in it and that he purchased it at Kshs.350,000/=. He stated that he contributed to the school and that he bought it from a former colleague. He said they were managing together and providing guidance. He stated that he maintained the school by paying the bills and the teachers. He stated that most of his receipts remained with the Plaintiff and she never opened the house. He produced copies of bank deposit slips, documents to show business registration, rental payments, and bank account statements.
14. The law governing this dispute is the *Matrimonial Property Act*, 2013. The said Act defines Matrimonial Property and guides Court on how the same should be divided between the Spouses upon dissolution of their marriage.
15. Section 6 of the *Matrimonial Property Act* provides that: -

“(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...”

16. In this instant case, there is no dispute on whether the properties in dispute constitute matrimonial property. Both parties agree that the properties are jointly owned and were acquired during the substance of the marriage. The only disagreement between the parties is on the division of the matrimonial property. I shall first review the law on this issue, before applying the same to the facts before this Court.

17. Section 7 of the *Matrimonial Property Act* which deals with ownership of Matrimonial provides:

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.

18. The Act also makes a special provision concerning cases where the matrimonial property is registered in the joint name of the parties. In these cases, the law creates a rebuttable presumption that the parties have equal shares to the jointly registered Matrimonial Property. Section 14 (2) of the *Matrimonial Property Act*, 2013 provides that:

“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.”

19. This provision is applicable to the instant case because the two properties are registered in the joint names of the parties. From the above provision, it is clear that there is a rebuttable presumption that both the Plaintiff and the Defendant have equal beneficial interests in the matrimonial properties in question.

20. Courts have on various occasions interpreted the import of Section 14 (2) of the *Matrimonial Property Act*, 2013. In *SS v APB (Civil Suit 23 of 2019)* [2024] KEHC 540 (KLR) (Civ) (24 January 2024) (Judgment), the Court interpreted the said provision and held as follows;

“40. When the matter falls under section 14 (2) it is upon the Respondent to adduce evidence to rebut that presumption. Such evidence shall be evidence that though the property is registered in joint names he is the only one who made financial contribution or that the other party only made such percentage of contribution to the acquisition. Considering the evidence of the acquisition of the property, I am satisfied that by evidence the Respondent has proved that he paid for that acquisition and that the applicant did not make



any direct financial contribution. He has therefore satisfactorily rebutted the presumption in section 14 (2) of *Matrimonial Property Act*."

21. Similarly, in *MWN v TIM (Civil Suit 33 of 2017)* [2022] KEHC 13771 (KLR) (Family) (23 September 2022) (Ruling), the Court interpreted the said provision and held as follows;

"28. In the case of jointly acquired properties during the marriage, Section 14(b) of the Act provides that there shall be a rebuttable presumption that the parties' beneficial interest in the matrimonial property is equal:

29. The exhibited sale agreement and share certificate exhibited by the Applicant shows that the suit property was acquired by the parties jointly. A reading of Section 14 of the Act reveals that the Court will make a presumption that joint property that is acquired during coverture, is held by spouses equally. This presumption may however be rebutted by evidence to the contrary."

22. Similarly, the Court of Appeal in *O K N v M P N* [2017] eKLR had this to say about this 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."

23. Both parties claimed to have contributed to the acquisition of the subject matrimonial properties. The Plaintiff claimed that she contributed exclusively to their purchase and that she is entitled to 100% of the properties. She claimed that she raised the funds through her pension from her previous employment and through a loan from a Sacco. On his part, the Defendant claimed that he offered more financial contribution than the Plaintiff and apportioned his interest at 70% and that of the Plaintiff at 30%. In that case, therefore, both parties are claiming a share higher than 50%. In my view, it was upon each of them to adduce evidence to rebut the presumption imposed by Section 14 (b) of the Act.
24. The Plaintiff claimed she bought the two properties with her own money. With regard to Parcel No. 199, Plot No. 298 Kitengela, she did not provide evidence of how much she bought the said property. She did not produce the Sale Agreement on its purchase and did not even disclose the exact year when the property was acquired. Thus, this court could not determine the percentage of her alleged financial contribution towards its acquisition.
25. Concerning the parcel Land Reference Number 2XX/19XXX, the Plaintiff claimed that she bought it by herself. She told the court that they acquired the property in 2012. She claimed that its purchase price was Kshs.12,000,000/= and that she paid the deposit for the purchase, which was Kshs.6,000,000/=. She claimed that she raised the deposit from her saving in the money market and a loan from a Sacco. She claimed that she has been paying the other remaining balance and she is still servicing a mortgage on the same. She provided several documents to support her claims. She also produced a document to show she took a credit facility from I&M Bank in 2020. It was a Short Term Loan for Kshs. 434,000/=.
26. However, the Plaintiff did not produce the Sale Agreement on the acquisition of the property, and therefore this court could not ascertain its purchase price. There was also no evidence that she paid the Kshs.6,000,000/= deposit she claims to have paid. In addition, she did not produce evidence of the Sacco loan she claims she took to raise the deposit. Similarly, in cross-examination, she admitted that she did not provide evidence to prove that she had sold Treasury Bills and that the proceeds went



into raising the deposit. In addition, although she claimed that she has subsequently made mortgage payments, she did not tell this court the amount she has paid by herself.

27. With all these shortfalls, this court could not determine with reasonable certainty the Plaintiff's direct financial contribution to the purchase of the two properties. She did not adduce evidence to show that she exclusively contributed 100% as she claimed and there was also no evidence that she contributed more than 50% in the acquisition of the said properties. The Plaintiff did not provide the necessary documentary evidence to help this court determine her alleged direct financial contribution, and this Court cannot determine this issue on the basis of assumptions and speculations. In that event, I find that she did not rebut the presumption imposed by Section 14 (b) of the Act in her favor.
28. On the other hand, the Defendant claimed that he is entitled to 70% while the Plaintiff should get 30% of the subject matrimonial properties. The Defendant produced copies of bank deposit slips to demonstrate that he contributed financially towards the purchase of the matrimonial properties. I have seen the said slips. One of them shows that the two operated a joint U.S Dollar account in Co-operative Bank and that the Defendant deposited \$ 10,000/= into the account on 25<sup>th</sup> May, 2007. I have seen the receipt, and the Plaintiff did not question the authenticity of the same.
29. Other deposit slips showed that the two operated a joint account at City Finance Bank. The slips showed that the Defendant made several deposits into that account on various dates of 2007 and 2008. On 6<sup>th</sup> September, 2006, the Defendant deposited Kshs.37,500/= into the account, 27<sup>th</sup> March, 2007-Kshs.50,000/=; 11<sup>th</sup> May, 2007-Kshs.150,000/=; 11<sup>th</sup> March, 2008-Kshs.180,000/=; 23<sup>rd</sup> December, 2008-Kshs.40,000/=; 25<sup>th</sup> February, 2009-Kshs.43,000/=; 22<sup>nd</sup> September, 2008-Kshs.50,000/=; 20<sup>th</sup> August, 2007-Kshs.32,000/=; 22<sup>nd</sup> April, 2008-Kshs.100,000/=; and 17<sup>th</sup> January, 2008-Kshs.46,500/= . I have seen all these receipts. They show that the Defendant made the deposits to the joint account and the Plaintiff did not question the authenticity of the receipts.
30. The Defendant also produced bank deposit slips from Barclays Bank to demonstrate that he was paying for the house rent for the rental house in which they were living together with the Plaintiff. He produced 4 receipts, one dated 11<sup>th</sup> January, 2007; another dated 10<sup>th</sup> February, 2007; another dated 7<sup>th</sup> May, 2007, and another dated 11<sup>th</sup> May, 2007. The Plaintiff did not question the authenticity of the said receipts.
31. Even with these receipts, this Court could not determine with reasonable certainty the Defendant's alleged direct financial contribution to the purchase of the two properties. However, he did not provide the sale agreements used in the purchase of the two properties. In addition, although he admitted that they jointly took a mortgage for the property built on Land Reference Number 2XX/19XXX, the two parties did not provide this court with the facility letter.
32. In my view, he did not adduce evidence to show that he contributed 70% as he claimed and there was also no evidence that he contributed more than 50% in the acquisition of the said properties. He did not provide the necessary evidence to help this court determine his alleged direct financial contribution, and this court cannot determine this issue on the basis of assumptions and speculations. In that event, I find that he did not rebut the presumption imposed by Section 14 (b) of the Act in his favor.
33. The next question is how this court should share the property, given that it is not clear how much each party contributed towards the purchase of the subject properties. The Court in *MWN v TIM (Civil*



*Suit 33 of 2017* [2022] KEHC 13771 (KLR) (Family) (23 September 2022) (Ruling) faced a similar question and held as follows;

“ 34. From the evidence on record, it is not clear how much each party contributed towards the purchase and development of the suit property. In the premises, the presumption under Section 14 of the Act that the parties’ beneficial interest in the suit property is equal, remains unrebutted. As stated in the case of *O K N v M P N* (supra), in the absence of a rebuttal, the Court will presume that each party made equal contribution towards the acquisition and development of the property.

36. Duly guided, and given that the parties’ contribution is unascertainable, I find that this is a proper case where it is equitable to apply the maxim ‘equality is equity.’ The parties’ beneficial interest in the suit property is equal.”

34. This Court is also guided by the Court of Appeal’s decision in *Peter Mburu Echaria V Priscilla Njeri Echaria* [2007] eKLR, where the Court faced a similar issue and held as follows;

“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 by Lord Pearson in *Gissing v Gissing* (supra) at page 788 paragraph c that:

‘No doubt it is reasonable to apply the maxim in a case where there has been very substantial contributions (otherwise than by way of advancement) by one spouse to the purchase of property in the name of the other spouse but the portion borne by the contributions to the total purchase price or cost is difficult to fix. But if it is plain, that the contributing spouse has contributed about one-quarter, I do not think it is helpful or right for the court to feel obliged to award either one-half or nothing.’”

35. Based on the above authorities, and given that the parties’ respective contribution is unascertainable, I also find that this is a proper case where it is equitable to apply the maxim ‘equality is equity.’ I therefore hold that the parties’ beneficial interest in the suit properties is equal.

### **Disposition**

36. In the end, after taking into consideration the totality of the evidence and the applicable law as analyzed herein, I make the following orders and declarations:

- a. The Plaintiff and the Defendant are entitled to Land Reference Number 2XX/19XXX (Original Number 2XX/12XXX) in equal shares. The property shall be valued and sold and the proceeds of sale shared equally between the parties.
- b. Either party shall be at liberty to buy out the other. However, considering that the Plaintiff has been staying on the said property together with the children of the marriage, the Plaintiff shall be given the first priority to buy out the Defendant on Land Reference Number 2XX/19XXX.
- c. The Plaintiff and the Defendant are entitled to Parcel No. XXX, Plot No. XXX Kitengela in equal shares. The property shall be valued and sold and the proceeds of sale shared equally between the parties.
- d. Either party shall be at liberty to buy out the other. However, considering that the Plaintiff has been given a priority in buying out the Defendant in the property described in (a) above,



the Defendant shall be given the first priority to buy out the Plaintiff in Parcel No. XXX, Plot No. XXX Kitengela.

- e. The parties shall equally meet the costs of valuation and any other costs that may be incidental to the sale. If one meets the entire cost, the same shall be reimbursed during the sharing of the proceeds of sale.
- f. The parties shall within 30 days agree on a valuer, failing which the same shall be undertaken by a government valuer.
- g. This being a family matter, no order as to costs.

37. Orders accordingly.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 03<sup>RD</sup> DAY OF JUNE 2025.**

.....

**C. KENDAGOR**

**JUDGE**

In the presence of:

Court Assistant: Beryl

Mr. Kitheka, Advocate for the Plaintiff

Defendant present

